158, 249

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1894.

No. 310.

EDWARD S. RICHARDS, APPELLANT,

vs.

THE CHASE ELEVATOR COMPANY AND HENRY J. CHASE, PRESIDENT.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS.

FILED OCTOBER 6, 1891.

(14,876.)

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JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., NOVEMBER 21, 1894.

1 Pleas in the circuit court of the United States of America for the northern district of Illinois, in the northern division thereof, held at the United States court-rooms, in the city of Chicago, in the district aforesaid, before the Hon. Henry W. Blodgett, judge of the district court of the United States for the northern district of Illinois, on Monday, the twenty-first day of October, in the adjourned October term of said court, in the year of our Lord one thousand eight hundred and eighty-nine, and of our Independence the one hundred and fourteenth year.

WM. H. BRADLEY, *Clerk.*

EDWARD S. RICHARDS
vs.
CHASE ELEVATOR COMPANY and HENRY J. CHASE, President. } In Chancery.

NORTHERN DISTRICT OF ILLINOIS, *ss:*

Be it remembered that on the fourteenth day of August, 1889, came the complainant, by his solicitors, and filed in the office of the clerk of the circuit court of the United States for the northern district of Illinois, at Chicago, in said district, his bond for costs and bill of complaint in said entitled cause; which said bond and bill are respectively in the words and figures following, to wit:

2 UNITED STATES OF AMERICA, *Northern District of Illinois,* } *ss:*

Circuit Court, August Term, A. D. 1889.

EDWARD S. RICHARDS, Complainant,
vs.
CHASE ELEVATOR COMPANY and HENRY J. CHASE, Defendants. } In Equity.

I enter myself security for costs in this cause and promise to pay all costs which may accrue to the opposite party in this action or to any of the officers of this court, and in default of payment by the complainant of any costs ordered or adjudged to be paid by him I hereby agree and stipulate that execution may issue against my property for any costs taxed against me.

Dated this 14th day of August, A. D. 1889.

FRANK F. REED.

(Endorsed:) Filed Aug. 14, A. D. 1889. Wm. H. Bradley, clerk.

3 UNITED STATES OF AMERICA, *Northern District of Illinois,* } *ss:*

In the United States Circuit Court in and for the Northern District of Illinois, to the September Term, A. D. 1889.

To the honorable judge of the said circuit court of the United States for the said northern district of Illinois:

Edward S. Richards, of the city of Chicago, county of Cook and State of Illinois and a citizen of the said State of Illinois, brings

this his bill of complaint against the Chase Elevator Company, a corporation duly organized and existing under and by virtue of the laws of the State of Illinois and a citizen of said State of Illinois, and Henry J. Chase, as president thereof; and thereupon your orator complains and says that he is the original and first inventor of a certain new and useful improvement in grain-transferring apparatus, fully described in the letters patent issued to him therefor, as hereinafter stated, and not known or used by others before his invention thereof, and not in public use or on sale in the United States for more than two (2) years prior to his application for letters patent thereon, and not patented to himself or others with his knowledge or consent, except in the said United States; and that your orator,

4 being a citizen of the United States, made due application for letters patent thereon, and fully and in all respects complied with all the requisitions of the law in that behalf, and did obtain letters patent therefor, issued in due form of law to him in the name of the United States of America, under the seal of the Patent Office of the United States, and duly signed by the Secretary of State and by the Commissioner of Patents, bearing date 18th day of November, A. D. 1884, whereby was granted and secured, according to law, to your orator, his heirs, administrators, and assigns, for the full term of seventeen (17) years from the said 18th day of November, A. D. 1884, the full and exclusive right and liberty of making, using, and vending the said invention throughout the United States and the Territories thereof, as in and by said letters patent or a certified copy thereof, here in court to be produced, will more fully appear.

And your orator further shows unto your honors that he has since the issuing of said letters patent aforesaid been and now is the sole and exclusive owner and holder thereof and of the rights and privileges thereby granted and secured; that a true copy of the said letters patent, together with the specifications, drawings, and claims annexed to said letters patent, is annexed to this bill of complaint and marked Exhibit "A" and hereby incorporated in and made part of this bill of complaint as fully as though herein specifically and at large set forth.

5 And your orator further shows unto your honors that the said improvement in grain-transferring apparatus patented to him as aforesaid has hitherto been in the exclusive possession of your orator or his grantees; has hitherto been and still is of great value and profit to your orator; that the said defendants, well knowing the premises, but contriving how to injure you orator, and without the consent or allowance of your orator, and without right, and in violation of said letters patent and your orator's exclusive rights thereunder secured to him as aforesaid, and after issuance of said letters patent and during and within the term of said seventeen (17) years' patent mentioned in said letters patent, before the bringing of this suit in this district aforesaid and in other parts of the United States, unlawfully, wrongfully, and injuriously, with the understanding to deprive your orator of the gains and profits which he made and otherwise would have derived from making, using,

and vending said patent improvement and against the will of your orator, did make, use, and sell and cause to be made, used, and sold various grain-transferring apparatuses which contained and embodied substantially the invention covered by said letters patent, in infringement of the said exclusive rights secured to your orator by said letters patent, but how many such grain-transferring apparatuses the said defendants have so made, used, and sold or caused to be made, used, and sold and the extent of the use thereof your orator is ignorant and cannot set forth, but your orator avers
6 on information and belief that the defendants have so made, used, and sold and caused to be made, used, and sold a large number thereof, and that they derived large profits therefrom, but to what amount your orator is ignorant and cannot set forth; that your orator has been deprived of large profits by reason of the aforesaid infringement of the defendants and has incurred large damages thereby.

And your orator further shows that he fears and has reason to fear that unless the defendants are restrained by a written injunction issuing out of this court they will continue to make, use, and sell large numbers of said grain-transferring apparatuses and thereby will cause irreparable injury *and* your orator's aforesaid exclusive rights.

And your orator prays unto your honors to grant unto your orator a preliminary and also a permanent written injunction, issuing out of and under the seal of this honorable court, directed to the said defendants and strictly enjoining them and their officers, agents, and employés from making, using, or selling or causing to be made, used or sold said grain-transferring apparatus or any other machine or apparatus containing or embodying the invention covered and secured to your orator by said letters patent.

And your orator further prays that the defendants, by decree of this court, may be compelled to account for and pay over to your orator all the profits which the defendants have derived or
7 shall derive from any making and using and selling or from causing to be made and used and sold any specimen of the said apparatus covered and secured by said letters patent, and also that the defendants may be decreed to pay all the damages which your orator has incurred or shall have incurred on account of the defendants' infringement of said letters patent, and that this honorable court will, upon hearing, increase the amount of said damages threefold by reason of the willful violation of said letters patent by the said defendants, and also that the defendants may be decreed to pay the costs of this suit, and that your orator may have such further and other relief as the equity of the case or the statutes of the United States may require and to this court may seem just.

To the end, therefore, that the defendants may, if they can, show why your orator should not have the relief hereby prayed, and may, but not under oath, the answer under oath of said defendants being hereby waived, as by said statute and rule of court in such case made and provided, and according to the best and utmost of the knowledge, remembrance, information, or belief of the officers of said de-

fendants, The Chase Elevator Company, and of defendant Henry J Chase, make full, true, direct, and perfect answer to such of the several interrogatories hereinafter numbered and set forth as by the note hereinafter written *it is* required to answer—that is to say:

8 & 9 First. Whether after the 18th day of November, 1884, they or either of them made or used or sold or caused to be made, used, or sold anywhere in the northern district of Illinois or elsewhere in the United States any specimen of any apparatus substantially like the invention covered and secured by said letters patent; and, if so, how many such specimens they so made, how many they so used, made, or sold, the extent to which they used the same, the number of cars of grain transferred by means of same, and how long they used the same.

May it please your honors to grant unto your orator the writ or *subpœna ad respondendum*, issuing out of and under the seal of this honorable court and directed to the said Chase Elevator Company and Henry J. Chase, president, and commanding them to appear and make answer to this bill of complaint, at the October term, A. D. 1889, of said court, and to perform and abide by said order and decree herein as to this court shall seem just; and this your orator will forever pray.

EDWARD S. RICHARDS,
Complainant.

ARMSTRONG, REED & DYCHE,
Solicitors for Complainant.

NOTE.—The said defendants are hereby required to answer the foregoing interrogatory marked one (1) and each and every question propounded therein.

ARMSTRONG, REED & DYCHE,
Solicitors for Complainant.

Filed Aug. 14, 1889.

WM. H. BRADLEY, *Clerk.*

(No Model.)

E. S. RICHARDS.

GRAIN TRANSFERRING APPARATUS.

No. 308,095. Patented Nov. 18, 1884.

No. 210 Richards v. Chase Elevator Co. Bal. p. 10

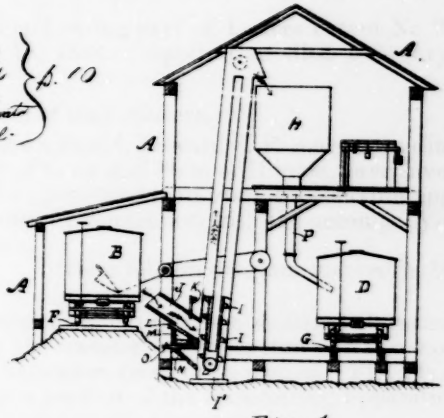

Fig. 1.

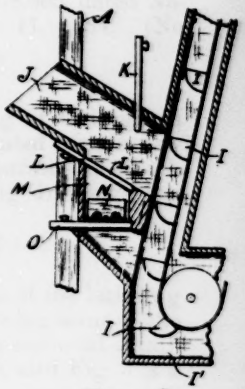

Fig. 2.

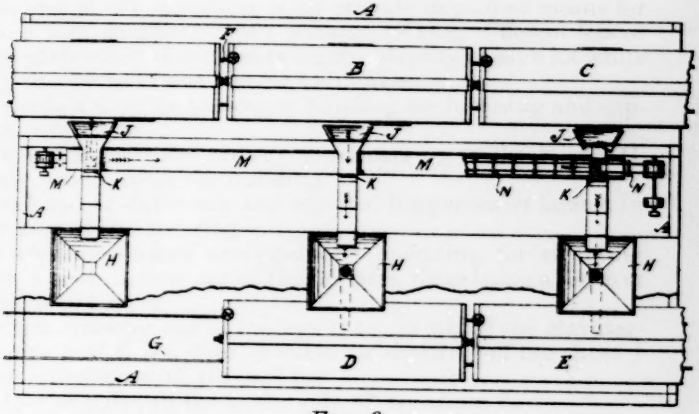

Fig. 3.

Witnesses:
J. B. Halpenny.
C. M. Morse

Inventor,
Edward S. Richards.
per F. F. Warner—
his Attorney.

11 EXHIBIT "A."

UNITED STATES PATENT OFFICE.

EDWARD S. RICHARDS, of Chicago, Illinois.

Grain-transferring Apparatus.

Specification forming part of Letters Patent No. 308,095, dated November 18, 1884. Application filed February 11, 1884. (No model.)

To all whom it may concern:

Be it known that I, Edward S. Richards, residing at Chicago, in the county of Cook and State of Illinois, have invented certain new and useful improvements in grain-transferring apparatus, of which the following, in connection with the accompanying drawings, is a specification.

(Here follows diagram marked p. 10.)

In the drawings, figure 1 is a sectional elevation of the building containing the transferring apparatus, and also showing some of the apparatus as broken away or in section. Fig. 2 is a sectional detail, enlarged, of a portion of the transferring apparatus, and Fig. 3 is a top or plan view of the apparatus.

Like letters of reference indicate like parts.

The purpose of my invention is to provide improved means for transferring and weighing grain without mixing different lots or loads with each other, thus preserving the identity of each lot while it is being transferred from one car to another.

A represents a fixed or stationary building for inclosing and supporting the apparatus.

B, C, D, and E represent railway grain-cars on tracks F and G, respectively, which enter the building:

H H are fixed or stationary and elevated hopper-scales located in the upper part of the building.

I I are elevator-buckets arranged and operating for elevating grain from a boot, I′, into one of the hoppers, there being a series of buckets for each hopper.

J is a chute entering one of the legs through which the elavator-buckets move, and K is a door or valve for shutting off the chute J from communication with the said leg.

L is a door or valve in the under side off the chute J.

M is a conveyer way or box, and N is a conveyer moving horizontally therein.

O is a slide or valve through which the way M communicates with the boot I′.

P is a discharge-spout depending from the bottom of the hopper, and arranged to discharge the contents of the hopper into a car, as indicated in Fig. 1, it being understood that the bottom of the hopper is provided in the usual manner with a slide or valve.

I actuate the elevators and the conveyer by means of any suitable power and driving gear, or in any well-known way.

I transfer and weigh the grain in the following manner: The car to be unloaded—for example, the car B—is drawn upon the track F and allowed to stand in such a position that the door will be directly opposite the chute J. If the grain is to be transferred to a car opposite or about opposite the car B—for example, to the car D—I close the door or valve L and open the valve K. The grain is then shoveled from the car by means of a steam-shovel, or otherwise, into the chute J, from which it passes into the elevator-leg through which the buckets move upward. The grain is thus elevated and discharged into the hopper of the hopper-scales located for discharging its contents into the car D. That hopper has its valve closed while being filled, and when full the grain therein is weighed and discharged into the car intended to receive it.

The operation, so far as now described, is complete, and the grain has been weighed and transferred so as not to be mixed with other grain or lots of grain. It may sometimes happen, however, that it may be either necessary or desirable to transfer the grain from one car to another not opposite the car to be unloaded; in other words, I may wish to transfer the grain from the car B to the car E when the said cars are arranged with relation to each other as represented in Fig. 3. In such case I close the door or valve K and open the door or valve L and set the conveyer in operation. I also open one of the slides or valves O in the conveyer-way, the valve so opened permitting the conveyer-way to communicate with the boot forming a part of the elevating ap-aratus for elevating the grain into the hopper discharging into the car E. By this means the grain discharged into the conveyer-way will be carried to the open door O, pass through that door, be elevated, discharged into a hopper, and weighed, and then discharged into the car E.

The conveyer I employ only for the purpose of enabling me to transfer the grain to a car not opposite the car being unloaded; but it will be perceived that some of the principal features of my invention will be brought into use if the elevators and hopper-
12 scales are not duplicated, and that the grain may be transferred and weighed without being mixed with other grain when only one elevator and hopper-scale are employed. In the latter case the conveyer is not essential, and is only essential for the purposes described.

Mill-feed and seeds, coal, ores, or minerals, as well as grain, may in like manner be transferred and weighed.

Having thus described my invention, what I claim as new, and desire to secure by letters patent, is—

1. The combination of a fixed or stationary building, the tracks F and G, an elevator apparatus, and elevated hopper-scales having a fixed or stationary hopper provided with a valve or slide in its bottom, and a discharge-spout, P, adapted and arranged for discharging the grain directly from the said hopper into a car, substantially as specified and for the purposes set forth.

2. The combination of a fixed or stationary building, the tracks

F and G, two or more elevating apparatus, a series of two or more elevated hopper-scales having fixed or stationary hoppers each having a valve or slide in its bottom, the discharge-spouts P P, adapted and arranged for discharging the grain directly from the said hoppers, respectively, into a correspondingly-arranged car, a horizontal conveyer, the chutes J J, having therein the doors or valves K and L, and the slides or doors O O, all arranged, substantially as shown and described, with relation to each other and for the purposes set forth.

In testimony that I claim the forgoing as my own I hereto affix my signature in presence of two witnesses.

EDWARD S. RICHARDS.

Witnesses:
F. F. WARNER,
J. B. HALPENNY.

(Endorsed:) Filed Aug. 14, 1889. Wm. H. Bradley, clerk.

13 On the same day, to wit, on 14 day of August, 1889, there issued out of said clerk's office a writ of subpœna in said entitled cause; which said writ, together with the return of the marshal endorsed thereon, is in the words and figures following, to wit:

UNITED STATES OF AMERICA, } ss:
Northern District of Illinois, }

The United States of America to Chase Elevator Company, a corporation, and Henry J. Chase, Greeting:

We command you and every of you that you appear before our judges of our circuit court of the United States of America for the northern district of Illinois, at Chicago, in said district, on the first Monday in the month of October next, to answer the bill of complaint of Edward S. Richards, this day filed in the clerk's office of said court, in said city of Chicago, then and there to receive and abide by such judgment and decree as shall then or thereafter be made, upon pain of judgment being pronounced against you by default.

To the marshal of the northern district of Illinois to execute.

Witness the Hon. Melville W. Fuller, Chief Justice of the Supreme Court of the United States of America, at Chicago aforesaid, this 14th day of August, in the year of our Lord one thousand eight hundred and eighty-nine, and of our Independence the 114th year.

[Seal of the Circuit Court U. S., Northern Dist. Illinois, 1855.]

WM. H. BRADLEY, *Clerk.*

Memorandum.

14 The above-named defendants are notified that unless they and each of them shall enter their appearance in the clerk's

office of said court, at Chicago aforesaid, on or before the day to which the above writ is returnable the complainant's bill will be taken against them as confessed and a decree entered accordingly.

WM. H. BRADLEY, *Clerk.*

I have served the within writ within my district in the following manner, to wit:

Upon Chase Elevator Company, a corporation therein named, on the 15th day of August, A. D. 1889, by delivering a true copy of the same to H. G. Chase, vice-president of the aforesaid company; also upon Henry J. Chase, therein named, on the 22nd day of August, A. D. 1889, by personally delivering to him a true copy of the same on the aforesaid day.

F. H. MARSH,
U. S. Marshal,
By GEO. N. JONES, *Deputy.*

Marshal's Fees.

2 service	$4 00
2 copies	1 00
— miles	40
1 return	10
	$5 50

(Endorsed:) Filed Aug. 27, A. D. 1889. Wm. H. Bradley, clerk.

15 Afterward, to wit, on the 24 day of September, 1889, came the defendants, by their solicitors, and filed in said clerk's office their appearance in said entitled cause; which said appearance is in the words and figures following, to wit:

United States Circuit Court, Northern District of Illinois.

EDWARD S. RICHARDS
vs.
THE CHASE ELEVATOR COMPANY *et al.* } In Chancery.

I hereby enter the appearance of the said defendants in the above-entitled cause for the October rule day, 1889.

GEORGE PAYSON,
Solicitor for Defendants.

(Endorsed:) Filed Sept. 24, 1889. Wm. H. Bradley, clerk.

Afterward, to wit, on the fourteenth day of October, 1889, came the defendants, by their solicitor, and filed in said clerk's office their demurrer to the bill in said entitled cause; which said demurrer is in the words and figures following, to wit:

16 United States Circuit Court, Northern District of Illinois.

THE CHASE ELEVATOR COMPANY *et al.*, Defendants, *ads.*
EDWARD S. RICHARDS, Complainant. } In Chancery.

The Joint and Several Demurrer of the Above-named Defendants to the Bill of Complaint of said Edward S. Richards, Complainant.

These defendants, by protestation, not confessing all or any of the matters and things in the said complainant's bill contained to be true in such manner and form as the same are therein set forth and alleged, demur to the said bill, and for cause of demurrer show that the said complainant has not by his said bill made such a case as entitles him in a court of equity to any discovery from or any relief against these defendants or any or either of such matters, and that any discovery which can be made by these defendants touching the matters complained of in the said bill or any of them cannot be of any avail to the said complainant for any of the purposes for which a discovery is sought against these defendants by the said bill or entitle the said complainant to any relief in this
17 court touching any of the matters therein complained of, and for cause of demurrer show:

First. That the complainant's said bill of complaint, in the the same were true, which these defendants in nowise admit, contains not any matter of equity whereon this court can ground any decree or give the complainant any relief or assistance as against these defendants or any or either of them.

Second. That the said letters patent granted to said Edward S. Richards November 18th, 1884, are wholly void on their face for want of patentable novelty and invention.

Third. That both of the claims in the said patent are wholly void as being for aggregations merely and not for patentable combinations.

Wherefore, and for divers other good causes of demurrer appearing in said bill, these defendants demur thereto and pray the judgment of this honorable court whether they shall be compelled to make any further and other answer to said bill, and humbly pray to be dismissed from hence with their reasonable costs in this behalf most wrongfully sustained.

THE CHASE ELEVATOR
COMPANY AND
HENRY J. CHASE,
By GEORGE PAYSON,
Their Solicitor.

GEORGE PAYSON,
Defendants' Solicitor and of Counsel.

18 I do hereby certify that in my opinion the above demurrer is well founded in point of law.

GEORGE PAYSON,
Counsel for said Defendants.

UNITED STATES OF AMERICA, } ss:
Northern District of Illinois, Cook County, }

Henry I. Chase, being duly sworn, deposes and says that he is one of the defendants in the above-entitled suit, and that the above demurrer is not interposed for delay.

HENRY I. CHASE.

Sworn to and subscribed before me this tenth day of October, A. D. 1889.

MARSHALL LAPHAM,
Notary Public.

[NOTARIAL SEAL.]

(Endorsed:) Filed Oct. 14, 1889. Wm. H. Bradley, clerk.

19 On the same day, to wit, on the fourteenth day of October, in the adjourned October term of said court, 1889, in the record of proceedings thereof in said entitled court, before Hon. Henry W. Blodgett, district judge, is the following entry, to wit:

Order.

EDWARD S. RICHARDS
v.
CHASE ELEVATOR COMPANY *et al.* } In Chancery.

Now come the parties, by their solicitors, and the defendants' demurrer to the bill herein is submitted on briefs and taken under advisement by the court.

20 Afterward, to wit, on the twenty-first day of October, in the adjourned October term of said court, 1889, in the record of the proceedings thereof in said entitled cause, before Hon. Henry W. Blodgett, district judge, is the following entry, to wit:

Decree.

EDWARD S. RICHARDS
v.
CHASE ELEVATOR COMPANY *et al.* } In Chancery.

Now come the parties, by their solicitors, and the court having considered the defendants' demurrer to the bill herein sustains the same, and it is ordered that said bill be dismissed for want of equity at complainant's costs, and that execution issue therefor. Thereupon said complainant, by his solicitor, prays an appeal herefrom to the Supreme Court of the United States, which is allowed upon complainants filing an appeal bond in the penal sum of three hundred dollars, with surety to be approved by the court.

Afterward, to wit, on the thirty-first day of March, 1890, there was filed in said clerk's office a stipulation in said entitled cause; which said stipulation is in the words and figures following, to wit:

21 STATE OF ILLINOIS, } ss:
County of Cook, }

In the Circuit Court of the United States for the Northern District of Illinois.

EDWARD S. RICHARDS, Complainant,
vs.
THE CHASE ELEVATOR COMPANY *et al.*, Defendants.

It is stipulated by and between counsel for the respective parties that the time allowed for filing appeal bond in said cause may be extended thirty (30) days from the 1st day of April, A. D. 1890, without prejudice to any of complainant's rights.

Dated Chicago, Illinois, March 31st, A. D. 1890.

ARMSTRONG, REED & DYCHE,
Solicitors for Complainant.

GEORGE PAYSON,
Solicitor for Defendants.

(Endorsed:) Filed M'ch 31, 1890. Wm. H. Bradley, clerk.

22 Afterward, to wit, on the thirtieth day of April, 1890, there was filed in said clerk's office an appeal bond in said entitled cause; which said appeal bond is in the words and figures following, to wit:

23 Know all men by these presents that we, Edward S. Richards and William D. Ewart, of Chicago, Illinois, are held and firmly bound unto the Chase Elevator Company and Henry J. Chase, of Chicago, Illinois, in the full and just sum of three hundred dollars, to be paid to the said Chase Elevator Company and Henry J. Chase, their certain attorney, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this twenty-fifth day of April, in the year of our Lord one thousand eight hundred and ninety.

Whereas lately, at a regular term of the United States circuit court for the northern district of Illinois, in a suit depending in said court between the said Edward S. Richards, complainant, and the said Chase Elevator Company and Henry J. Chase, defendants, a decree was rendered against the said Edward S. Richards, and the said Edward S. Richards having prayed an appeal to the United States Supreme Court:

Now, the condition of the above obligation is such that if the said Edward S. Richards shall prosecute his appeal to effect and answer all damages and costs if he fail to make his appeal good,

then the above obligation to be void; else to remain in full force and virtue.

EDWARD S. RICHARDS. [SEAL.]
WILLIAM D. EWART. [SEAL.]

Sealed and delivered in presence of—
——— ———.

Approved by—
H. W. BLODGETT, *Judge.*

(Endorsed:) Filed Ap'l 30, 1890. Wm. H. Bradley, clerk.

24 NORTHERN DISTRICT OF ILLINOIS, } ss:
Northern Division, }

I, William H. Bradley, clerk of the circuit court of the United States for the northern district of Illinois, do hereby certify the above and foregoing to be a true and correct transcript of the record of all the proceedings had in said court in the cause wherein Edward S. Richards is complainant and Chase Elevator Company and Henry J. Chase, president, are defendants, as the same appears from the records and files of said court now remaining in my custody and control.

Seal of Circuit Court U. S., Northern Dist. Illinois, 1855.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at my office, in Chicago, in said district, this twelfth day of September, 1891.

WM. H. BRADLEY, *Clerk.*

25 UNITED STATES OF AMERICA, } ss:
Northern District of Illinois, }

To Chase Elevator Company and Henry J. Chase, president, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, D. C., on the seventh day of October, A. D. 1891, pursuant to a decree entered of record in the circuit court of the United States for the northern district of Illinois, wherein Edward S. Richards is complainant and you are defendants, to show cause, if any there be, why the decree mentioned should not be corrected and speedy justice should not be done to the parties in that behalf.

Witness the Honorable Walter Q. Gresham, judge, this 8th day of September, in the year of our Lord one thousand eight hundred and ninety-one.

WALTER Q. GRESHAM.

SEPT. 9, '91.

Service accepted.

GEO. PAYSON,
Sol'r for D'f'nts.

26 *Assignments of Errors.*

In the Supreme Court of the United States.

EDWARD S. RICHARDS, Complainant in Error, *vs.* CHASE ELEVATOR COMPANY and Henry J. Chase, President, Defendants in Error.	In Equity. Error to the Circuit Court of the United States for the Northern District of Illinois.

And now comes said Edward S. Richards, by Charles K. Offield, his attorney in the above-entitled cause, and says that in the record and proceedings of the said circuit court of the United States for the northern district of Illinois, in this cause, wherein said Edward S. Richards was complainant and said Chase Elevator Company and Henry J. Chase, president, *are* defendants, and in the rendition of the final decree and judgment entered in said cause in favor of said defendants and against said complainant there is manifest error in the following, among other things:

First. That the circuit court erred in sustaining the demurrer of said defendants and dismissing the complainant's bill for want of equity at complainant's costs.

Second. The circuit court erred in rendering decree and judgment against said complainant.

Third. The circuit court erred in rendering decree and judgment against said complainant and in not rendering decree and judgment against said defendants.

Fourth. That the circuit court erred in granting defendants' petition for rehearing of the demurrer of said defendants.

Fifth. That the circuit court erred in setting aside the order entered herein July 15, 1889, overruling the demurrer of said defendants.

27 Sixth. That the said decree, judgment, and proceedings were otherwise manifestly irregular, uncertain, informal, and contrary to law.

Wherefore the said complainant in error prays that for the errors aforesaid the said final decree and judgment of the circuit court against the complainant in error may be annulled, reversed, and altogether made as nothing, and that this cause may be remanded to the said circuit court with directions to correct all and singular the errors aforesaid, and thereupon to enter decree and judgment in favor of said complainant in error, to the end that justice may be done, &c.

EDWARD S. RICHARDS,
By CHARLES K. OFFIELD,
His Attorney.

Endorsed on cover: Case No. 14,876. N. Illinois C. C. U. S. Term No., 310. Edward S. Richards, appellant, *vs.* The Chase Elevator Company and Henry J. Chase, president. Filed October 6th, 1891.

138 U.S. 299

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1894.

No. 311.

EDWARD S. RICHARDS, APPELLANT,

vs.

THE MICHIGAN CENTRAL RAILROAD COMPANY, THE BOARD OF TRADE OF CHICAGO, AND JOHN WALKER.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS.

FILED OCTOBER 6, 1891.

(14,877.)

(14,877.)

SUPREME COURT OF THE UNITED STATES.

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JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., NOVEMBER 21, 1894.

1 Pleas in the circuit court of the United States of America for the northern district of Illinois, in the northern division thereof, held at the United States court-rooms, in the city of Chicago, in the district aforesaid, before the Hon. Henry W. Blodgett, judge of the district court of the United States for the northern district of Illinois, on Monday, the twenty-first day of October, in the adjourned October term of said court, in the year of our Lord one thousand eight hundred and eighty-nine, and of our Independence the one hundred and fourteenth year.

WM. H. BRADLEY, *Clerk.*

EDWARD S. RICHARDS
vs.
MICHIGAN CENTRAL RAILROAD COMPANY, THE BOARD OF TRADE OF CHICAGO, and JOHN WALKER. } In Chancery.

NORTHERN DISTRICT OF ILLINOIS, *ss:*

Be it remembered that on the twenty-third day of January, 1889, came the complainant, by his solicitors, and filed in the office of the clerk of the circuit court of the United States for the northern district of Illinois, at Chicago, in said district, his bond for costs and bill of complaint in said entitled cause; which said bond and bill are in the words and figures following, to wit:

2 UNITED STATES OF AMERICA, *Northern District of Illinois,* } *ss:*

Circuit Court, January Term, A. D. 1889.

EDWARD S. RICHARDS, Complainant,
vs.
THE MICHIGAN CENTRAL RAILROAD COMPANY *et al.* } In Equity.

I enter myself security for costs in this cause and promise to pay all costs which may accrue to the opposite party in this action or to any of the officers of this court, and in default of payment by the complainant of any costs ordered or adjudged to be paid by him hereby agree and stipulate that execution may issue against my property for any costs taxed against him.

Dated this 23rd day of January, A. D. 1889.

FRANK F. REED.

(Endorsed:) Filed Jan'y 23, A. D. 1889. Wm. H. Bradley, clerk.

3 UNITED STATES OF AMERICA, *Northern District of Illinois,* } *ss:*

In the United States Circuit Court in and for the Northern District of Illinois, to the March Term, A. D. 1889.

To the honorable judge of the said circuit court of the United States for the said northern district of Illinois:

Edward S. Richards, of the city of Chicago, county of Cook and State of Illinois and a citizen of the said State of Illinois, brings

this his bill of complaint against the Michigan Central Railroad Company, a corporation duly organized and existing under and by virtue of the laws of the State of Michigan and a citizen in said State of Michigan; the Board of Trade of Chicago, a corporation organized and existing under the laws of Illinois, and John Walker; and thereupon your orator complains and says that he is the original and first inventor of a certain new and useful improvement in grain-transferring apparatus, fully described in the letters patent issued to him therefor, as hereinafter stated, and not known or used by others before his invention thereof, and not in public use or on sale in the United States for more than two years prior to his application for letters patent thereon, and not
4 patented to himself or others with his knowledge or consent, except in the said United States; and that your orator, being a citizen of the United States, made due application for letters patent thereon, and fully and in all respects complied with all the requisitions of the law in that behalf, and did obtain letters patent therefor, issued in due form of law to him in the name of the United States of America, under the seal of the Patent Office of the United States, and duly signed by the Secretary of State and by the Commissioner of Patents, bearing date 18th day of November, A. D. 1884, whereby was granted and secured, according to law, to your orator, his heirs, administrators, and assigns, for the full term of seventeen (17) years from the said 18th day of November, A. D. 1884, the full and exclusive right and liberty of making, using, and vending the said invention throughout the United States and the Territories thereof, as in and by said letters patent or a certified copy thereof, here in court to be produced, will more fully appear.

And your orator further shows unto your honors that he has since the issuing of said letters patent aforesaid been and now is the sole and exclusive owner and holder thereof and of the rights and privileges thereby granted and secured; that a true copy of the said letters patent, together with the specifications, drawings, and claims annexed to said letters patent, is annexed to this bill of complaint and marked Exhibit "A" and hereby incorporated in and made a part of this bill of complaint as fully as though herein specifically and at large set forth.

5 And your orator further shows unto your honors that the said improvement in grain-transferring apparatus patented to him as aforesaid has hitherto been in the exclusive possession of your orator or his grantees; has hitherto been and still is of great value and profit to your orator; that the said defendants, well knowing the premises, but contriving how to injure your orator, and without the consent or allowance of your orator, and without right, and in violation of said letters patent and your orator's exclusive rights thereunder secured to him as aforesaid, and after issuance of said letters patent and during and within the term of said seventeen (17) years' patent mentioned in said letters patent, before the bringing of this suit in this district aforesaid and in other parts of the United States, unlawfully, wrongfully, and injuriously, with the

understanding to deprive your orator of the gains and profits which he made and otherwise would have derived from making, using, and vending said patent improvement and against the will of your orator, did jointly make and use and cause to be made and used various grain-transferring apparatuses which contained and embod*ying* substantially the invention covered by said letters patent, in infringement of the said exclusive rights secured to your orator by said letters patent, but how many such grain-transferring apparatuses the said defendants have so made and used or caused
6 to be made and used and the extent of the use thereof your orator is ignorant and cannot set forth, but your orator avers on information and belief that the defendants have so made and used and caused to be made and used a large number thereof, and that they derived large profits therefrom, but to what amount your orator is ignorant and cannot set forth; that your orator has been deprived of large profits by reason of the aforesaid infringements and has incurred large damages thereby.

And your orator further shows that he fears and has reason to fear that unless the defendants are restrained by a written injunction issuing out of this court they will continue to make and use large numbers of said grain-transferring apparatuses and thereby will cause irreparable injury *and* your orator's aforesaid exclusive rights.

And your orator prays unto your honors to grant unto your orator a preliminary and also a permanent written injunction, issuing out of and under the seal of this honorable court, directed to the said Michigan Central Railroad Company, The Board of Trade of Chicago, and John Walker and strictly enjoining them and their officers, agents, and employés from making, using, or selling or causing to be made, used, or sold said grain-transferring apparatus or any other machine or apparatus containing or embodying the invention covered and secured to your orator by said letters patent.

7 And your orator further prays that the defendants, by decree of this court, may be compelled to account for and pay over to your orator all the profits which the defendants have derived or shall derive from any making and using or from causing to be made and used any specimen of the said apparatus covered and secured by said letters patent, and also that the defendants may be decreed to pay all the damages which your orator has incurred or shall have incurred on account of the defendants' infringement of said letters patent, and that this honorable court will, upon hearing, increase the amount of said damages threefold by reason of the willful violation of said letters patent by the said defendants, and also that the defendants may be decreed to pay the costs of this suit, and that your orator may have such further and other relief as the equity of the case or the statutes of the United States may require and to this court may seem just.

To the end, therefore, that the defendants may, if they can, show why your orator should not have the relief hereby prayed, and may, but not under oath, the answer under oath of said defendants being hereby waived, as by said statute and rule of court in such case made

and provided, and according to the best and utmost of the knowledge, remembrance, information, or belief of the officers of said corporate defendants, full, true, direct, and perfect answer make to such of the several interrogatories hereinafter numbered and set
8 forth as by the note hereinafter written they are required to answer—that is to say:

First. Whether after the 18th day of November, 1884, they or any or either of them made or used or caused to be made or used anywhere in the northern district of Illinois or elsewhere in the United States any specimen of any apparatus substantially like the invention covered and secured by said letters patent; and, if so, how many such specimens they so made, how many they so used, the extent to which they used the same, the number of cars of grain transferred by means of same, and how long they used the same.

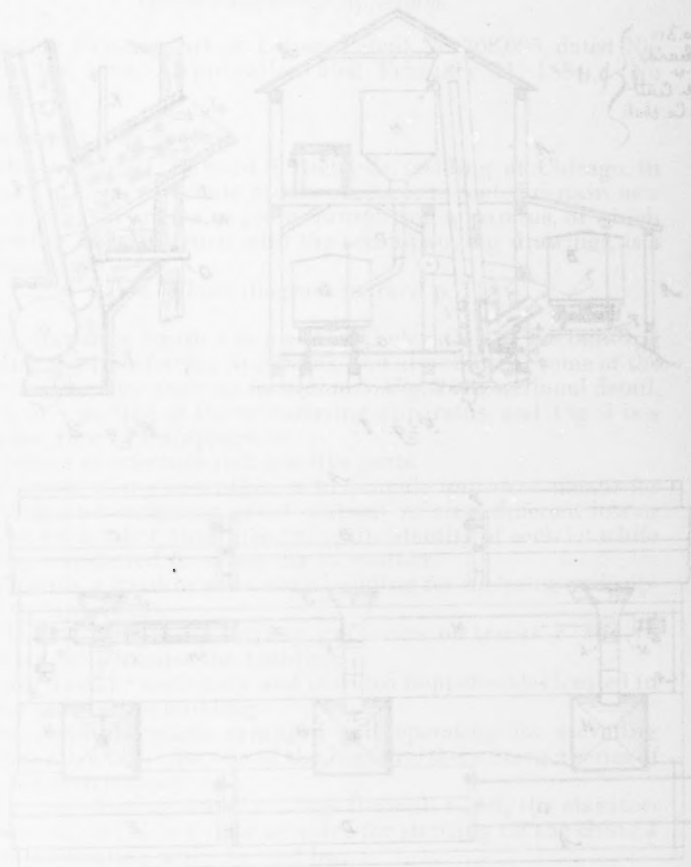
May it please your honors to grant unto your orator the writ of *subpœna ad respondendum*, issuing out of and under the seal of this honorable court and directed to the said Michigan Central Railroad Company, The Board of Trade of Chicago, and John Walker, and commanding them to appear and make answer to this bill of complaint, at the March term, A. D. 1889, of said court, and to perform and abide by said order and decree herein as to this court shall seem just; and this your orator will forever pray.

EDWARD S. RICHARDS,
By F. F. REED, *His Attorney, Complainant.*
W. A. GARDNER &
ARMSTRONG, REED & DYCHE,
Attorneys and Counsellors, Solicitors for Complainant.

9 & 10 NOTE.—The said defendants are hereby required to answer the foregoing interrogatory marked one (1) and each and every question propounded therein.

W. A. GARDNER,
ARMSTRONG, REED & DYCHE,
Attorneys & Counsellors, Solicitors for Complainant.

Endorsed: Filed Jan'y 23, 1889. Wm. H. Bradley, clerk.



(No Model.)

E. S. RICHARDS.

GRAIN TRANSFERRING APPARATUS.

No. 308,095. Patented Nov. 18, 1884.

No. 311. Richards v. Mich. Cent. R.R. Co. et al. } P. 11

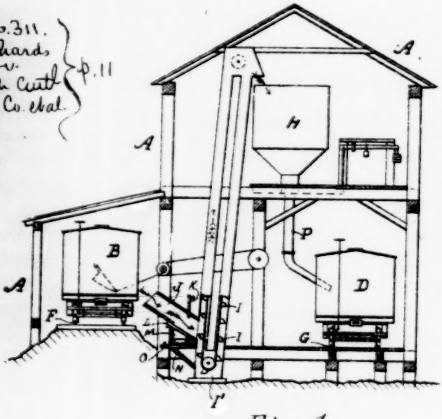


Fig. 1.

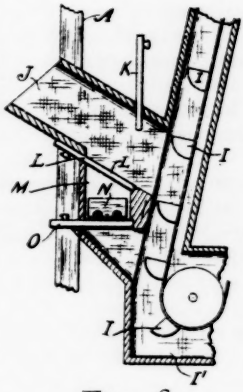


Fig. 2.

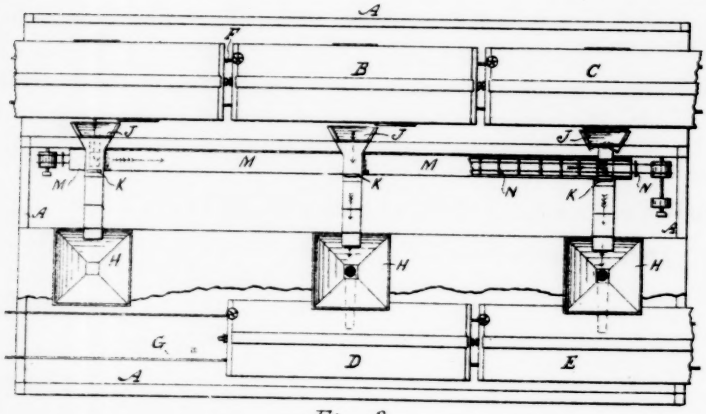


Fig. 3.

Witnesses:
J. B. Halpenny
B. B. Morse

Inventor.
Edward S. Richards.
per F. F. Warner—
his Attorney.

12 EXHIBIT "A."

UNITED STATES PATENT OFFICE.

EDWARD S. RICHARDS, of Chicago, Illinois.

Grain-transferring Apparatus.

Specification forming part of Letters Patent No. 308,095, dated November 18, 1884. Application filed February 11, 1884. (No model.)

To all whom it may concern :

Be it known that I, Edward S. Richards, residing at Chicago, in the county of Cook and State of Illinois, have invented certain new and useful improvements in grain-transferring apparatus, of which the following, in connection with the accompanying drawings, is a specification.

(Here follows diagram marked p. 11.)

In the drawings, figure 1 is a sectional elevation of the building containing the transferring apparatus, and also showing some of the apparatus as broken away or in section. Fig. 2 is a sectional detail, enlarged, of a portion of the transferring apparatus, and Fig. 3 is a top or plan view of the apparatus.

Like letters of reference indicate like parts.

The purpose of my invention is to provide improved means for transferring and weighing grain without mixing different lots or loads with each other, thus preserving the identity of each lot while it is being transferred from one car to another.

A represents a fixed or stationary building for inclosing and supporting the apparatus.

B, C, D, and E represent railway grain-cars on tracks F and G, respectively, which enter the building.

H H are fixed or stationary and elevated hopper-scales located in the upper part of the building.

I I are elevator-buckets arranged and operating for elevating grain from a boot, I′, into one of the hoppers, there being a series of buckets for each hopper.

J is a chute entering one of the legs through which the elavator-buckets move, and K is a door or valve for shutting off the chute J from communication with the said leg.

L is a door or valve in the under side of the chute J.

M is a conveyer way or box, and N is a conveyer moving horizontally therein.

O is a slide or valve through which the way M communicates with the boot I′.

P is a discharge-spout depending from the bottom of the hopper, and arranged to discharge the contents of the hopper into a car, as indicated in Fig. 1, it being understood that the bottom of the hopper is provided in the usual manner with a slide or valve.

I actuate the elevators and the conveyer by means of any suitable power and driving gear, or in any well-known way.

I transfer and weigh the grain in the following manner: The car to be unloaded—for example, the car B—is drawn upon the track F and allowed to stand in such a position that the door will be directly opposite the chute J. If the grain is to be transferred to a car opposite or about opposite the car B—for example, to the car D—I close the door or valve L and open the valve K. The grain is then shoveled from the car by means of a steam-shovel, or otherwise, into the chute J, from which it passes into the elevator-leg through which the buckets move upward. The grain is thus elevated and discharged into the hopper of the hopper-scales located for discharging its contents into the car D. That hopper has its valve closed while being filled, and when full the grain therein is weighed and discharged into the car intended to receive it.

The operation, so far as now described, is complete, and the grain has been weighed and transferred so as not to be mixed with other grain or lots of grain. It may sometimes happen, however, that it may be either necessary or desirable to transfer the grain from one car to another not opposite the car to be unloaded; in other words, I may wish to transfer the grain from the car B to the car E when the said cars are arranged with relation to each other as represented in Fig. 3. In such case I close the door or valve K and open the door or valve L and set the conveyer in operation. I also open one of the slides or valves O in the conveyer-way, the valve so opened permitting the conveyer-way to communicate with the boot forming a part of the elevating ap-aratus for elevating the grain into the hopper discharging into the car E. By this means the grain discharged into the conveyer-way will be carried to the open door O, pass through that door, be elevated, discharged into a hopper, and weighed, and then discharged into the car E.

The conveyer I employ only for the purpose of enabling me to transfer the grain to a car not opposite the car being unloaded; but it will be perceived that some of the principal features of my invention will be brought into use if the elevators and hopper-
13 scales are not duplicated, and that the grain may be transferred and weighed without being mixed with other grain when only one elevator and hopper-scale are employed. In the latter case the conveyer is not essential, and is only essential for the purposes described.

Mill-feed and seeds, coal, ores, or minerals, as well as grain, may in like manner be transferred and weighed.

Having thus described my invention, what I claim as new, and desire to secure by letters patent, is—

1. The combination of a fixed or stationary building, the tracks F and G, an elevator apparatus, and elevated hopper-scales having a fixed or stationary hopper provided with a valve or slide in its bottom, and a discharge-spout, P, adapted and arranged for discharging the grain directly from the said hopper into a car, substantially as specified and for the purposes set forth.

2. The combination of a fixed or stationary building, the tracks

F and G, two or more elevating apparatus, a series of two or more elevated hopper-scales having fixed or stationary hoppers each having a valve or slide in its bottom, the discharge-spouts P P, adapted and arranged for discharging the grain directly from the said hoppers, respectively, into a correspondingly-arranged car, a horizontal conveyer, the chutes J J, having therein the doors or valves K and L, and the slides or doors O O, all arranged, substantially as shown and described, with relation to each other and for the purposes set forth.

In testimony that I claim the forgoing as my own I hereto affix my signature in presence of two witnesses.

EDWARD S. RICHARDS.

Witnesses:
F. F. WARNER,
J. B. HALPENNY.

(Endorsed:) Filed Jan. 23, 1889. Wm. H. Bradley, clerk.

14 On the same day, to wit, on the 23 day of January, 1889, there issued out of said clerk's office a writ of subpœna in said entitled cause; which said writ, together with the return of the marshal endorsed thereon, is in the words and figures following, to wit:

UNITED STATES OF AMERICA, } ss:
Northern District of Illinois, }

The United States of America to Michigan Central Railroad Company, a corporation, &c.; The Board of Trade of Chicago, a corporation, &c., and John Walker, Greeting:

We command you and every of you that you appear before our judges of our circuit court of the United States of America for the northern district of Illinois, at Chicago, in said district, on the first Monday in the month of March next, to answer the bill of complaint of Edward S. Richards, this day filed in the clerk's office of said court, in said city of Chicago, then and there to receive and abide by such judgment and decree as shall then or thereafter be made, upon pain of judgment being pronounced against you by default.

To the marshal of the northern district of Illinois to execute.

Witness the Hon. Melville W. Fuller, Chief Justice of the Supreme Court of the United States of America, at Chicago aforesaid, this 23d day of January, in the year of our Lord one thousand eight hundred and eighty-nine, and of our Independence the 113th year.

[Seal of Circuit Court U. S., Northern Dist. Illinois, 1855.]

WM. H. BRADLEY, *Clerk.*

Memorandum.

15 The above-named defendants are notified that unless they and each of them shall enter their appearance in the clerk's

office of said court, at Chicago aforesaid, on or before the day to which the above writ is returnable the complainant's bill will be taken against them as confessed and a decree entered accordingly.

WM. H. BRADLEY, *Clerk.*

I have served the within writ within my district in the following manner, to wit: Upon Michigan Central Railroad Company, a corporation, &c., by delivering a true copy of the same to N. R. Busenburk, assistant gen'l passenger agent of the aforesaid company, on the 24th day of January, A. D. 1889; also upon the Board of Trade of Chicago, therein named, on the 24th day of January, A. D. 1889, by delivering a true copy of the same to George F. Stone, secretary of the aforesaid corporation; also upon John Walker, therein named, on the 24th day of January, A. D. 1889, by personally delivering to him a true copy of the same on the aforesaid day. I did not serve the president of the above-named corporations, having been unable to find them within my district.

F. H. MARSH,
U. S. Marshal,
By GEO. N. JONES, *Deputy.*

Marshal's Fees.

3 service	$6 00
3 copies	1 50
— miles	65
—	10
	$8 25

Endorsed: Filed Jan'y 24, A. D. 1889. Wm. H. Bradley, clerk.

16 Afterward, to wit, on the 4 day of March, 1889, came the Michigan Central R. R. Co., by its solicitor, and filed in said clerk's office its appearance in said entitled cause; which said appearance is in the words and figures following, to wit:

United States Circuit Court, Northern District of Illinois. In Chancery.

EDWARD S. RICHARDS
vs.
THE MICHIGAN CENTRAL RAILROAD COMPANY, THE BOARD OF TRADE OF CHICAGO, and JOHN WALKER.

I hereby enter the appearance of the said defendant, The Michigan Central Railroad Company, in the above-entitled case.
March 4, '89.

GEORGE PAYSON,
Solicitor for the Michigan Central Railroad Company.

Endorsed: Filed M'ch 4, 1889. Wm. H. Bradley, clerk.

On the same day, to wit, on the 4 day of March, 1889, came the Board of Trade of Chicago, by its solicitor, and filed in said clerk's office its appearance in said entitled cause; which said appearance is in the words and figures following, to wit:

17 In the Circuit Court of the United States, Northern District of Illinois. In Chancery.

EDWARD S. RICHARDS
vs.
THE MICHIGAN CENTRAL RAILROAD COMPANY, THE BOARD OF TRADE OF THE CITY OF CHICAGO, & JOHN WALKER.

I hereby enter the appearance of The Board of Trade of the City of Chicago and John Walker, defendants herein.

SIDNEY SMITH,
Solicitor for said Board of Trade.

Endorsed: Filed M'ch 4, 1889. Wm. H. Bradley, clerk.

Afterward, to wit, on the 28 day of March, 1889, came the defendants, by their solicitors, and filed in said clerk's office their demurrer to the bill in said entitled cause; which said demurrer is in the words and figures following, to wit:

18 United States Circuit Court, Northern District of Illinois. In Chancery.

THE MICHIGAN CENTRAL RAILROAD COMPANY, THE BOARD OF TRADE OF CHICAGO, and JOHN WALKER, Defendants,
ads.
EDWARD S. RICHARDS, Complainant.

The Joint and Several Demurrer of the Above-named Defendants to the Bill of Complaint of said Edward S. Richards, Complainant.

These defendants, by protestation, not confessing all or any of the matters and things in the said complainant's bill contained to be true in such manner and form as the same are therein set forth and alleged, demur to the said bill, and for cause of demurrer show that the said complainant has not by his said bill made such a case as entitles him in a court of equity to any discovery from or any relief against these defendants or any or either of them as to the matters contained in the said bill or any of such matters, and that any discovery which can be made by these defendants touching the matters complained of in the said bill or any of them cannot be of any avail to the said complainant for any of the purposes for which a discovery is sought against these defendants by the said bill or entitle the said complainant to any relief in this
19 court touching any of the matters therein complained of, and for cause of demurrer show:

First. That the complainant's said bill of complaint, in case the same were true, which these defendants in nowise admit, contains not any matter of equity whereon this court can ground

any decree or give the complainant any relief or assistance as against these defendants or any or either of them.

Second. That the said letters patent granted to said Edward S. Richards November 18th, 1884, are wholly void on their face for want of patentable novelty and invention.

Third. That both of the claims in the said patent are wholly void as being for aggregations merely and not for patentable combinations.

Wherefore, and for divers other good causes of demurrer appearing in said bill, these defendants demur thereto and pray the judgment of this honorable court whether they shall be compelled to make any further and other answer to said bill, and humbly pray to be dismissed from hence with their reasonable costs in this behalf most wrongfully sustained.

THE MICHIGAN CENTRAL
R. R. CO.,
By H. B. LEDYARD, *Pres't.*

GEORGE PAYSON,
Counsel for The Michigan Central Railroad Company.
SIDNEY SMITH,
Counsel for The Board of Trade & John Walker.

20 UNITED STATES OF AMERICA, }
Eastern District of Michigan, Wayne County, } *ss:*

Henry B. Ledyard, being sworn, says that he is president of the said defendant, The Michigan Central Railroad Company, and that the above demurrer is not interposed for delay.

HENRY B. LEDYARD.

Sworn to and subscribed before me this 5th day of March, A. D. 1889.

[NOTARIAL SEAL.] GEO. L. NADOLLECK,
Notary Public, Wayne County, Michigan.

I do hereby certify that in my opinion the above demurrer is well founded in point of law.

GEORGE PAYSON,
Counsel for The Michigan Central Railroad Company.

Endorsed: Filed M'ch. 28, 1889. Wm. H. Bradley, clerk.

21 Afterward, to wit, on the eighth day of July, in the July term of said court, 1889, in the record of the proceedings thereof in said entitled cause, before Hon. Henry W. Blodgett, district judge, is the following entry, to wit:

Order.

EDWARD S. RICHARDS
vs. } In Chancery.
MICHIGAN CENTRAL RAILROAD COMPANY *et al.*

Now come the parties, by their solicitors, and the demurrer to the bill comes on to be heard, and after hearing the arguments of counsel the court takes the same under advisement.

22 Afterward, to wit, on the fifteenth day of July, in the July term of said court, 1889, in the record of the proceedings thereof in said entitled cause, before Hon. Henry W. Blodgett, district judge, is the following entry, to wit:

Order.

EDWARD S. RICHARDS
vs.
MICHIGAN CENTRAL RAILROAD COMPANY *et al.* } In Chancery.

Now come the defendants, by their solicitors, and the court having considered the defendants' demurrer to the bill herein, overrules the same, and on motion of George Payson, Esq., the time for defendants to answer is extended to the fifteenth day of September next, if they so elect.

23 Afterward, to wit, on the second day of September, in the July term of said court, 1889, in the record of the proceedings thereof in said entitled cause, before Hon. Henry W. Blodgett, district judge, is the following entry, to wit:

Order.

EDWARD S. RICHARDS
vs.
MICHIGAN CENTRAL RAILROAD COMPANY *et al.* } In Chancery.

Now comes said defendant railroad company, by George Payson, Esq., its solicitor, and presents its petition for a rehearing of the demurrer of said defendant, and, after hearing the arguments of said solicitor, the court takes said petition under advisement. It is ordered that twenty days be allowed said defendant to answer herein after the disposition of said petition.

24 Afterwards, to wit, on the seventh day of October, in the adjourned October term of said court, 1889, in the record of the proceedings thereof in said entitled cause, before Hon. Henry W. Blodgett, district judge, is the following entry, to wit:

Order.

EDWARD S. RICHARDS
vs.
MICHIGAN CENTRAL RAILROAD COMPANY *et al.* } In Chancery.

The court, having considered the defendants' petition for a rehearing herein, sustains said petition and grants a rehearing of said cause.

25 Afterward, to wit, on the fourteenth day of October, in the adjourned October term of said court, 1889, in the record of the proceedings thereof in said entitled cause, before Hon. Henry W. Blodgett, district judge, is the following entry, to wit:

Order.

EDWARD S. RICHARDS
vs.
MICHIGAN CENTRAL RAILROAD COMPANY *et al.* } In Chancery.

Now come the parties, by their solicitors, and the defendants' demurrer to the bill herein is submitted on briefs and taken under advisement by the court.

26 Afterward, to wit, on the twenty-first day of October, in the adjourned October term of said court, 1889, in the record of the proceedings thereof in said entitled cause, before Hon. Henry W. Blodgett, district judge, is the following entry, to wit:

Decree.

EDWARD S. RICHARDS
vs.
MICHIGAN CENTRAL RAILROAD COMPANY *et al.* } In Chancery.

Now come the parties, by their solicitors, and the court, having considered defendants' demurrer to the bill herein, now orders that the order entered herein July 15, 1889, overruling demurrer, be set aside, that said demurrer be now sustained, and that said bill be dismissed for want of equity at complainant's costs, and that execution issue. Thereupon said complainant's solicitor prays an appeal from this order to the Supreme Court of the United States, which is allowed upon complainants filing an appeal bond in the penal sum of three hundred dollars, with surety to be approved by the court.

Afterward, to wit, on the 19 day of December, 1889, there was filed in said clerk's office an appeal bond in said entitled cause; which said appeal bond is in the words and figures following, to wit:

27 Know all men by these presents that we, Edward S. Richards, as principal, and William A. Gardner, as surety, are held and firmly bound unto Michigan Central Railroad Company, The Board of Trade of Chicago, and John Walker in the full and just sum of three hundred dollars, to be paid to the said Michigan Central Railroad Company, The Board of Trade of Chicago, and John Walker, their certain attorney, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this 17th day of December, in the year of our Lord one thousand eight hundred and eighty-nine.

Whereas lately, at a term begun on the first Monday of October, 1889, to wit, on October 21st, 1889, in the circuit court for the northern district of Illinois, in a suit depending in said court between Edward S. Richards, complainant, and Michigan Central Railroad

Company, The Board of Trade of Chicago, and John Walker, the bill of complaint was dismissed for want of equity and a decree for costs was rendered against the said Edward S. Richards, and the said Edward S. Richards, complainant, prayed an appeal from said order and decree to the Supreme Court of the United States, which was allowed upon complainants filing an appeal bond in the penal sum of three hundred dollars, with surety to be approved
28 by the court:

Now, the condition of the above obligation is such that if the said Edward S. Richards shall prosecute his said appeal to effect and answer all damages and costs if he fail to make his appeal good, then the above obligation to be void; else to remain in full force and virtue.

EDWARD S. RICHARDS. [SEAL.]
WILLIAM A. GARDNER. [SEAL.]

Sealed and delivered in presence of—
FRANK F. REED.

Approved by—
H. W. BLODGETT, *Judge.*

Filed Dec. 17, 1889.

WM. H. BRADLEY, *Clerk.*

29 NORTHERN DISTRICT OF ILLINOIS, } ss:
Northern Division, }

I, William H. Bradley, clerk of the circuit court of the United States for the said northern district of Illinois, do hereby certify the above and foregoing to be a true and correct transcript of the record of all the proceedings had in said court in the cause wherein Edward S. Richards is complainant and Michigan Central Railroad Company, The Board of Trade of Chicago, and John Walker are defendants, as the same appears from the records and files of said court now remaining in my custody and control.

Seal of Circuit Court U. S., Northern Dist. Illinois, 1855.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at my office, in Chicago, in said district, this fourteenth day of September, 1891.

WM. H. BRADLEY, *Clerk.*

30 UNITED STATES OF AMERICA, } ss:
Northern District of Illinois, }

To Michigan Central Railroad Company, The Board of Trade of Chicago, and John Walker, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, D. C., on the seventh day of October, A. D. 1891, pursuant to a decree entered of record in the circuit court of the United States for the northern district of Illinois, wherein Edward S. Richards is complainant and you are de-

fendants, to show cause, if any there be, why the decree mentioned should not be corrected and speedy justice should not be done to the parties in that behalf.

Witness the Hon. Walter Q. Gresham, judge, this 8th day of September, in the year of our Lord one thousand eight hundred and ninety-one.

WALTER Q. GRESHAM.

SEPT. 9, '91.

Service accepted for Michigan Central Railroad Co.
GEORGE PAYSON, *Sol'or.*

31 *Assignment of Errors.*

In the Supreme Court of the United States.

EDWARD C. RICHARDS, Complainant in Error, *vs.* MICHIGAN CENTRAL RAILROAD COMPANY, The Board of Trade of Chicago, and John Walker, Defendants in Error.	In Equity. Error to the Circuit Court of the United States for the Northern District of Illinois.

And now comes said Edward S. Richards, by Charles K. Offield, his attorney in the above-entitled cause, and says that in the record and proceedings of the said circuit court of the United States for the northern district of Illinois, in this cause, wherein said Edward S. Richards was complainant and said Michigan Central Railroad Company, The Board of Trade of Chicago, and John Walker are defendants, and in the rendition of the final decree and judgment entered in said cause in favor of said defendants and against said complainant there is manifest error in the following, among other things:

First. That the circuit court erred in sustaining the demurrer of said defendants and dismissing the complainant's bill for want of equity at complainant's costs.

Second. The circuit court erred in rendering decree and judgment against said complainant.

Third. The circuit court erred in rendering decree and judgment against said complainant and in not rendering decree and judgment against said defendants.

Fourth. That the circuit court erred in granting defendants' petition for rehearing of the demurrer of said defendants.

32 Fifth. That the circuit court erred in setting aside the order entered herein July 15, 1889, overruling the demurrer of said defendants.

Sixth. That the said decree, judgment, and proceedings were otherwise manifestly irregular, uncertain, informal, and contrary to law.

Wherefore the said complainant in error prays that for the errors aforesaid the said final decree and judgment of the circuit court

against the said complainant in error may be annulled, reversed, and altogether made as nothing, and that this cause may be remanded to the said circuit court with directions to correct all and singular the errors aforesaid, and thereupon to enter decree and judgment in favor of said complainant in error, to the end that justice may be done, &c.

EDWARD S. RICHARDS,
By CHARLES K. OFFIELD,
His Attorney.

Endorsed on cover: Case No. 14,877. N. Illinois C. C. U. S. Term No., 311. Edward S. Richards, appellant, *vs.* The Michigan Central Railroad Company, The Board of Trade of Chicago, and John Walker. Filed October 6th, 1891.

158 U.S. 299

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1894.

No. 312.

EDWARD S. RICHARDS, APPELLANT,

vs.

THE CHICAGO AND GRAND TRUNK RAILROAD COMPANY, THE BOARD OF TRADE OF CHICAGO, AND JOHN WALKER.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS.

FILED OCTOBER 6, 1891.

(14,878.)

(14,878.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1894.

No. 312.

EDWARD S. RICHARDS, APPELLANT,

vs.

THE CHICAGO AND GRAND TRUNK RAILROAD COMPANY, THE BOARD OF TRADE OF CHICAGO, AND JOHN WALKER.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS.

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JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., NOVEMBER 21, 1894.

1 Pleas in the circuit court of the United States of America for the northern district of Illinois, in the northern division thereof, held at the United States court-rooms, in the city of Chicago, in the district aforesaid, before the Hon. Henry W. Blodgett, judge of the district court of the United States for the northern district of Illinois, on Monday, the twenty-first day of October, in the adjourned October term of said court, in the year of our Lord one thousand eight hundred and eighty-nine, and of our Independence the one hundred and fourteenth year.

WM. H. BRADLEY, *Clerk.*

EDWARD S. RICHARDS
vs.
CHICAGO AND GRAND TRUNK RAILROAD COMPANY, THE BOARD OF TRADE OF THE CITY — CHICAGO, and JOHN WALKER. } In Chancery.

NORTHERN DISTRICT OF ILLINOIS, *ss:*

Be it remembered that on the sixteenth day of January, 1889, came the complainant, by his solicitors, and filed in the office of the clerk of the circuit court of the United States for the northern district of Illinois, at Chicago, in said district, his bond for costs and bill of complaint in said entitled cause; which said bond and bill are, respectively, in the words and figures following, to wit:

2 UNITED STATES OF AMERICA, *Northern District of Illinois,* } *ss:*

Circuit Court, January Term, A. D. 1889.

EDWARD S. RICHARDS, Complainant,
vs.
CHICAGO AND GRAND TRUNK RAILWAY COMPANY *et al.*, Defendants. } In Equity.

I enter myself security for costs in this cause and promise to pay all costs which may accrue to the opposite party in this action or to any of the officers of this court, and in default of payment by the complainant of any costs ordered or adjudged to be paid by him hereby agree and stipulate that execution may issue against my property for any costs taxed against me.

Dated this 16th day of January, A. D. 1889.

FRANK F. REED.

Endorsed: Filed Jan'y 16, A. D. 1889. Wm. H. Bradley, clerk.

3 UNITED STATES OF AMERICA, *Northern District of Illinois,* } *ss:*

In the United States Circuit Court in and for the Northern District of Illinois, to the February Term, A. D. 1889.

To the honorable judge of the said circuit court of the United States for the said northern district of Illinois:

Edward S. Richards, of the city of Chicago, county of Cook and State of Illinois and a citizen of the said State of Illinois, brings

this his bill of complaint against the Chicago & Grand Trunk Railway Company, a corporation duly organized and existing under and by virtue of the laws of the States of Illinois, Indiana, and Michigan; the Board of Trade of Chicago, a corporation organized under the laws of the State of Illinois, and John Walker; and thereupon your orator complains and says that he is the original and first inventor of a certain new and useful improvement in grain-transferring apparatus, fully described in the letters patent issued to him therefor, as hereinafter stated, and not known or used by others before his invention thereof, and not in public use or on sale in the United States for more than two years prior to his application for letters patent thereon, and not patented to himself or others with his knowledge or consent, except in the said United States; and that your orator, being a citizen of the United States, made due application for letters patent
4 thereon, and fully and in all respects complied with all the requisitions of the law in that behalf, and did obtain letters patent therefor, issued in due form of law to him in the name of the United States of America, under the seal of the Patent Office of the United States, and duly signed by the Secretary of State and by the Commissioner of Patents, bearing date 18th day of November, A. D. 1884, whereby was granted and secured, according to law, to your orator, his heirs, administrators, and assigns, for the full term of seventeen (17) years from the said 18th day of November, A. D. 1884, the full and exclusive right and liberty of making, using, and vending the said invention throughout the United States and the Territories thereof, as in and by said letters patent or a certified copy thereof, here in court to be produced, will more fully appear.

And your orator further shows unto your honors that he has since the issuing of said letters patent aforesaid been and now is the sole and exclusive owner and holder thereof and of the rights and privileges thereby granted and secured; that a true copy of the said letters patent, together with the specifications, drawings, and claims annexed to said letters patent, is annexed to this bill of complaint and marked Exhibit "A" and hereby incorporated in and made a part of this bill of complaint as fully as though herein specifically and at large set forth.

5 And your orator further shows unto your honors that the said improvement in grain-transferring apparatus patented to him as aforesaid has hitherto been in the exclusive possession of your orator or his grantees; has hitherto been and still is of great value and profit to your orator; that the said defendants, well knowing the premises, but contriving how to injure your orator, and without the consent or allowance of your orator, and without right, and in violation of said letters patent and your orator's exclusive rights thereunder secured to him as aforesaid, and after issuance of said letters patent and during and within the term of said seventeen (17) years' patent mentioned in said letters patent, before the bringing of this suit in this district aforesaid and in other parts of the United States, unlawfully, wrongfully, and injuriously, with the

understanding to deprive your orator of the gains and profits which he made and otherwise would have derived from making, using, and vending said patent improvement and against the will of your orator, make and use and to cause to be made and used various grain-transferring apparatuses which contained and embodied substantially the invention covered by said letters patent, in infringement of the said exclusive rights secured to your orator by said letters patent, but how many such grain-transferring apparatuses the said defendants have so made and used or caused to be made and used and the extent of the use thereof your orator is ignorant and cannot set forth, but your orator avers on in-
6 formation and belief that the defendants have so made and used and caused to be made and used a large number thereof, and that they derived large profits therefrom, but to what amount your orator is ignorant and cannot set forth; that your orator has been deprived of large profits by reason of the aforesaid infringements and has incurred large damages thereby.

And your orator further shows that he fears and has reason to fear that unless the defendants are restrained by a written injunction issuing out of this court they will continue to make and use large numbers of said grain-transferring apparatuses and thereby will cause irreparable injury to your orator's aforesaid exclusive rights.

And your orator prays unto your honors to grant unto your orator a preliminary and also a permanent injunction, issuing out of and under the seal of this honorable court, directed to the said Chicago & Grand Trunk Railway Company, The Board of Trade of Chicago, and John Walker and strictly enjoining them and their officers, agents, and employees from making, using, or selling or causing to be made, used, or sold said grain-transferring apparatus or any other machine or apparatus containing or embodying the invention covered and secured to your orator by said letters patent.

And your orator further prays that the defendants, by de-
7 cree of this court, may be compelled to account for and pay over to your orator all the profits which the defendants have derived or shall derive from any making and using or from causing to be made and used any specimen of the said apparatus covered and secured by said letters patent, and also that the defendants may be decreed to pay all the damages which your orator has incurred or shall have incurred on account of the defendants' infringement of said letters patent, and that this honorable court will, upon hearing, increase the amount of said damages threefold by reason of the willful violation of said letters patent by the said defendants, and also that the defendants may be decreed to pay the costs of this suit, and that your orator may have such further and other relief as the equity of the case or the statutes of the United States may require and to this court may seem just.

To the end, therefore, that the defendants may, if they can, show why your orator should not have the relief hereby prayed, and may, but not under oath, the answer under oath of said defendants being hereby waived, as by said statute and rule of court in such case made

and provided, and according to the best and utmost of the knowledge, remembrance, information, or belief of the officers of said corporate defendants, full, true, direct, and perfect answer make to such of the several interrogatories hereinafter numbered and set forth as by the note hereinafter written *it is* required to answer—that is to say:

8 First. Whether after the 18th day of November, 1884, they or any or either of them made or used or caused to be made or used anywhere in the northern district of Illinois or elsewhere in the United States any specimen of any apparatus substantially like the invention covered and secured by said letters patent; and, if so, how many such specimens they so made, how many they so used, the extent to which they used the same, the number of cars of grain transferred by means of same, and how long they used the same.

May it please your honors to grant unto your orator the writ of *subpœna ad respondendum*, issuing out of and under the seal of this honorable court and directed to the said Chicago & Grand Trunk Railway Company, The Board of Trade of Chicago, and John Walker, and command them to appear and make answer to this bill of complaint, at the February term, A. D. 1889, of said court, and to perform and abide by said order and decree herein as to this court shall seem just; and this your orator will forever pray.

EDWARD S. RICHARDS,
Complainant.
ARMSTRONG, REED & DYCHE, &
W. A. GARDNER,
Solicitors for Complainant.

NOTE.—The said defendants are hereby required to an-
9 & 10 swer the foregoing interrogatory marked one (1) and each and every question propounded therein.

ARMSTRONG, REED & DYCHE, &
W. A. GARDNER,
Solicitors for Complainant.

Endorsed: Filed Jan'y 16, 1889. Wm. H. Bradley, clerk.

(No Model.)

E. S. RICHARDS.

GRAIN TRANSFERRING APPARATUS.

No. 308,095. Patented Nov. 18, 1884.

no. 212.
Richards
v.
C. Pfg. & R. R.
Co et al
p. 11

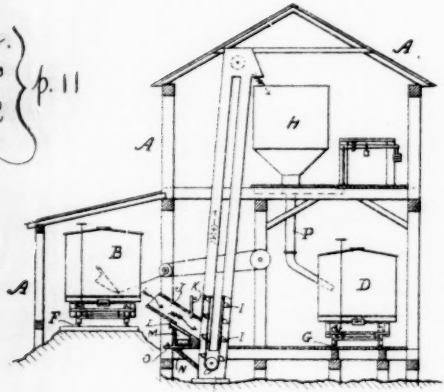

Fig. 1.

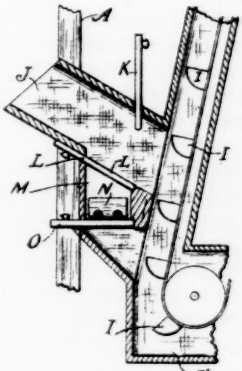

Fig. 2.

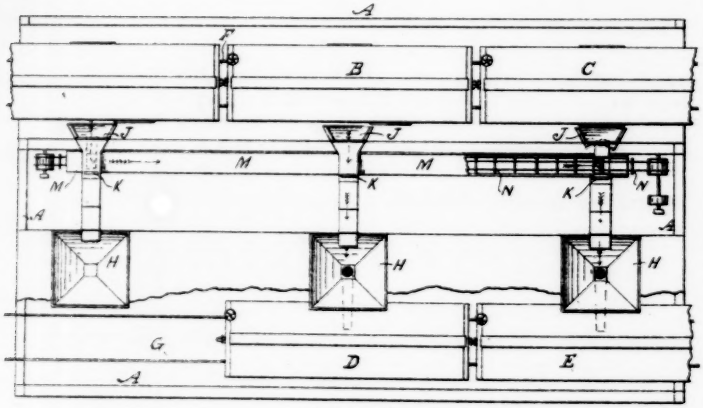

Fig. 3.

Witnesses:
J. B. Halpenny
B. B. Morse

Inventor,
Edward S. Richards.
per F. F. Warner
his Attorney.

12 EXHIBIT "A."

UNITED STATES PATENT OFFICE.

EDWARD S. RICHARDS, of Chicago, Illinois.

Grain-transferring Apparatus.

Specification forming part of Letters Patent No. 308,095, dated November 18, 1884. Application filed February 11, 1884. (No model.)

To all whom it may concern:

Be it known that I, Edward S. Richards, residing at Chicago, in the county of Cook and State of Illinois, have invented certain new and useful improvements in grain-transferring apparatus, of which the following, in connection with the accompanying drawings, is a specification.

(Here follows diagram marked p. 11.)

In the drawings, figure 1 is a sectional elevation of the building containing the transferring apparatus, and also showing some of the apparatus as broken away or in section. Fig. 2 is a sectional detail, enlarged, of a portion of the transferring apparatus, and Fig. 3 is a top or plan view of the apparatus.

Like letters of reference indicate like parts.

The purpose of my invention is to provide improved means for transferring and weighing grain without mixing different lots or loads with each other, thus preserving the identity of each lot while it is being transferred from one car to another.

A represents a fixed or stationary building for inclosing and supporting the apparatus.

B, C, D, and E represent railway grain-cars on tracks F and G, respectively, which enter the building.

H H are fixed or stationary and elevated hopper-scales located in the upper part of the building.

I I are elevator-buckets arranged and operating for elevating grain from a boot, I′, into one of the hoppers, there being a series of buckets for each hopper.

J is a chute entering one of the legs through which the elavator-buckets move, and K is a door or valve for shutting off the chute J from communication with the said leg.

L is a door or valve in the under side of the chute J.

M is a conveyer way or box, and N is a conveyer moving horizontally therein.

O is a slide or valve through which the way M communicates with the boot I′.

P is a discharge-spout depending from the bottom of the hopper, and arranged to discharge the contents of the hopper into a car, as indicated in Fig. 1, it being understood that the bottom of the hopper is provided in the usual manner with a slide or valve,

I actuate the elevators and the conveyer by means of any suitable power and driving gear, or in any well-known way.

I transfer and weigh the grain in the following manner: The car to be unloaded—for example, the car B—is drawn upon the track F and allowed to stand in such a position that the door will be directly opposite the chute J. If the grain is to be transferred to a car opposite or about opposite the car B—for example, to the car D—I close the door or valve L and open the valve K. The grain is then shoveled from the car by means of a steam-shovel, or otherwise, into the chute J, from which it passes into the elevator-leg through which the buckets move upward. The grain is thus elevated and discharged into the hopper of the hopper-scales located for discharging its contents into the car D. That hopper has its valve closed while being filled, and when full the grain therein is weighed and discharged into the car intended to receive it.

The operation, so far as now described, is complete, and the grain has been weighed and transferred so as not to be mixed with other grain or lots of grain. It may sometimes happen, however, that it may be either necessary or desirable to transfer the grain from one car to another not opposite the car to be unloaded; in other words, I may wish to transfer the grain from the car B to the car E when the said cars are arranged with relation to each other as represented in Fig. 3. In such case I close the door or valve K and open the door or valve L and set the conveyer in operation. I also open one of the slides or valves O in the conveyer-way, the valve so opened permitting the conveyer-way to communicate with the boot forming a part of the elevating ap-aratus for elevating the grain into the hopper discharging into the car E. By this means the grain discharged into the conveyer-way will be carried to the open door O, pass through that door, be elevated, discharged into a hopper, and weighed, and then discharged into the car E.

The conveyer I employ only for the purpose of enabling me to transfer the grain to a car not opposite the car being unloaded; but it will be perceived that some of the principal features of my invention will be brought into use if the elevators and hopper-
13 scales are not duplicated, and that the grain may be transferred and weighed without being mixed with other grain when only one elevator and hopper-scale are employed. In the latter case the conveyer is not essential, and is only essential for the purposes described.

Mill-feed and seeds, coal, ores, or minerals, as well as grain, may in like manner be transferred and weighed.

Having thus described my invention, what I claim as new, and desire to secure by letters patent, is—

1. The combination of a fixed or stationary building, the tracks F and G, an elevator apparatus, and elevated hopper-scales having a fixed or stationary hopper provided with a valve or slide in its bottom, and a discharge-spout, P, adapted and arranged for discharging the grain directly from the said hopper into a car, substantially as specified and for the purposes set forth.

2. The combination of a fixed or stationary building, the tracks

F and G, two or more elevating apparatus, a series of two or more elevated hopper-scales having fixed or stationary hoppers each having a valve or slide in its bottom, the discharge-spouts P P, adapted and arranged for discharging the grain directly from the said hoppers, respectively, into a correspondingly-arranged car, a horizontal conveyer, the chutes J J, having therein the doors or valves K and L, and the slides or doors O O, all arranged, substantially as shown and described, with relation to each other and for the purposes set forth.

In testimony that I claim the foregoing as my own I hereto affix my signature in presence of two witnesses.

EDWARD S. RICHARDS.

Witnesses:
F. F. WARNER,
J. B. HALPENNY.

(Endorsed:) Filed Jan'y 16, 1889. Wm. H. Bradley, clerk.

14 On the same day, to wit, on the sixteenth day of January, 1889, there issued out of said clerk's office a writ of subpœna in said entitled cause; which said writ, together with the return of marshal endorsed thereon, is in the words and figures following, to wit:

UNITED STATES OF AMERICA, } ss:
Northern District of Illinois, }

The United States of America to Chicago and Grand Trunk Railroad Company, a corporation, &c., and The Board of Trade of Chicago, a corporation, &c., Greeting:

We command you and every of you that you appear before our judges of our circuit court of the United States of America for the northern district of Illinois, at Chicago, in said district, on the first Monday in the month of March next, to answer the bill of complaint of Edward S. Richards, this day filed in the clerk's office of said court, in said city of Chicago, then and there to receive and abide by such judgment and decree as shall then or thereafter be made, upon pain of judgment being pronounced against you by default.

To the marshal of the northern district of Illinois to execute.

Witness the Hon. Melville W. Fuller, Chief Justice of the Supreme Court of the United States of America, at Chicago aforesaid, this 16th day of January, in the year of our Lord one thousand eight hundred and eighty-nine, and of our Independence the 113th year.

[Seal of Circuit Court U. S., Northern Dist. Illinois, 1855.]

WM. H. BRADLEY, *Clerk.*

Memorandum.

The above-named defendants are notified that unless they and each of them shall enter their appearance in the clerk's
15 office of said court, at Chicago aforesaid, on or before the day to which the above writ is returnable the complainant's bill will be taken against them as confessed and a decree entered accordingly.

WM. H. BRADLEY, *Clerk.*

I have served the within writ within my district in the following manner, to wit:

Upon Chicago and Grand Trunk Railroad Company, a corporation, &c., by delivering a true copy of the same to George B. Reeve, traffic manager of the aforesaid corporation, on the 24th day of January, A. D. 1889; also upon the Board of Trade of Chicago, therein named, on the 24th day of January, A. D. 1889, by delivering a true copy of the same to George F. Stone, secretary of the aforesaid corporation. I did not serve the president- of the above-named corporations, having been unable to find them within my district.

F. H. MARSH,
U. S. Marshal,
By GEO. N. JONES, *Deputy.*

Marshal's Fees.

2 service	$4 00
2 copies	1 00
	$5 00

Endorsed: Filed Jan'y 24, A. D. 1889. Wm. H. Bradley, clerk.

16 Afterward, to wit, on the 4 day of March, 1889, came the Chicago & Grand Trunk R. R. Co., by its solicitor, and filed in said clerk's office its appearance in said entitled cause; which said appearance is in the words and figures following, to wit:

United States Circuit Court, Northern District of Illinois. In Chancery.

EDWARD S. RICHARDS
vs.
THE CHICAGO & GRAND TRUNK RAILWAY COMPANY and THE BOARD OF TRADE OF CHICAGO.

I hereby enter the appearance of the said defendant, The Chicago & Grand Trunk Railway Company, in the above-entitled case.
March 4, '89.

GEORGE PAYSON,
Solicitor for the Chicago & Grand Trunk Railway Co.

(Endorsed:) Filed M'ch 4, 1889. Wm. H. Bradley, clerk.

On the same day, to wit, on the fourth day of March, 1889, came the Board of Trade of the City of Chicago, by its solicitor, and filed in said clerk's office its appearance in said entitled cause; which said appearance is in the words and figures following, to wit:

17 In the Circuit Court of the United States, Northern District of Illinois. In Chancery.

EDWARD S. RICHARDS
vs.
THE CHICAGO & GRAND TRUNK RAILROAD COMPANY & THE BOARD OF TRADE OF THE CITY OF CHICAGO.

I hereby enter the appearance of The Board of Trade of the City of Chicago, defendant herein.

SIDNEY SMITH,
Solicitor for said Board of Trade.

Endorsed: Filed M'ch 4, 1889. Wm. H. Bradley, clerk.

Afterward, to wit, on the twenty-eighth day of March, 1889, came the Chicago and Grand Trunk R. R. Co. and the Board of Trade of Chicago, by their solicitors, and filed in said clerk's office their demurrer to the bill in said entitled cause; which said demurrer is in the words and figures following, to wit:

18 United States Circuit Court, Northern District of Illinois. In Chancery.

THE CHICAGO & GRAND TRUNK RAILWAY COMPANY and THE BOARD OF TRADE OF CHICAGO, Defendants,
ads.
EDWARD S. RICHARDS, Complainant.

The Joint and Several Demurrer of the Above-named Defendants to the Bill of Complaint of said Edward S. Richards, Complainant.

These defendants, by protestation, not confessing all or any of the matters and things in the said complainant's bill contained to be true in such manner and form as the same are therein set forth and alleged, demur to the said bill, and for cause of demurrer show that the said complainant has not by his said bill made such a case as entitles him in a court of equity to any discovery from or any relief against these defendants or any or either of them as to the matters contained in the said bill or any of such matters, and that any discovery which can be made by these defendants touching the matters complained of in the said bill or any of them cannot be of any avail to the said complainant for any of the
19 purposes for which a discovery is sought against these defendants by the said bill or entitle the said complainant to any relief in this court touching any of the matters therein complained of, and for cause of demurrer show:

First. That the complainant's said bill of complaint, in case the same were true, which these defendants in nowise admit, contains not any matter of equity whereon this court can ground

any decree or give the complainant any relief or assistance as against these defendants or any or either of them.

Second. That the said letters patent granted to said Edward S. Richards November 18th, 1884, are wholly void on their face for want of patentable novelty and invention.

Third. That both of the claims in the said patent are wholly void as being for aggregations merely and not for patentable combinations.

Wherefore, and for divers other good causes of demurrer appearing in said bill, these defendants demur thereto and pray the judgment of this honorable court whether they shall be compelled to make any further and other answer to said bill, and humbly pray to be dismissed from hence with their reasonable costs in this behalf most wrongfully sustained.

GEORGE PAYSON,
Counsel for The Grand Trunk Railway Company.
SIDNEY SMITH,
Counsel for The Board of Trade of the City of Chicago.

20 I do hereby certify that in my opinion the above demurrer is well founded in point of law.

GEORGE PAYSON,
Counsel for The Grand Trunk Railway Company.

UNITED STATES OF AMERICA, *Eastern District of Michigan, Wayne County,* } *ss:*

W. J. Spicer, being duly sworn, says that he is general manager of the said defendant, The Chicago & Grand Trunk Railway Company, and that the above demurrer is not interposed for delay.

W. J. SPICER,
Gen. Manager C. & G. T. R'y.

Sworn to and subscribed before me this 6th day of March, A D. 1889.

[NOTARIAL SEAL.] A. B. THOMAS,
Notary Public in & for Wayne Co., Mich.

Endorsed: Filed M'ch 28, 1889. Wm. H. Bradley, clerk.

21 Afterward, to wit, on the eighth day of July, in the July term of said court, 1889, in the record of the proceedings thereof in said entitled cause, before Hon. Henry W. Blodgett, district judge, is the following entry, to wit:

Order.

EDWARD S. RICHARDS
vs.
CHICAGO AND GRAND TRUNK RAILWAY COMPANY *et al.* } In Chancery.

Now come the parties, by their solicitors, and the demurrer to the bill herein comes on to be heard, and after hearing the arguments of counsel the court takes the same under advisement.

22 Afterward, to wit, on the fifteenth day of July, in the July term of said court, 1889, in the record of the proceedings thereof in said entitled cause, before Hon. Henry W. Blodgett, district judge, is the following entry, to wit:

Order.

EDWARD S. RICHARDS
vs.
CHICAGO AND GRAND TRUNK RAILWAY COMPANY *et al.* } In Chancery.

Now come the defendants, by their solicitor, and the court having considered the defendants' demurrer to the bill herein, overrules the same, and on motion of George Payson, Esq., the time for defendants to answer is extended to the fifteenth day of September next, if they so elect.

23 Afterward, to wit, on the second day of September, in the July term of said court, 1889, in the record of the proceedings thereof in said entitled cause, before Hon. Henry W. Blodgett, district judge, is the following entry, to wit:

Order.

EDWARD S. RICHARDS
vs.
CHICAGO AND GRAND TRUNK RAILROAD COMPANY *et al.* } In Chancery.

Now comes said defendant railroad company, by George Payson, Esq., its solicitor, and presents its petition for a rehearing of the demurrer of said defendant, and, after hearing the arguments of said solicitor, the court takes said petition under advisement. It is ordered that twenty days be allowed said defendant to answer herein after the disposition of said petition.

24 Afterward, to wit, on the seventh day of October, in the adjourned October term of said court, 1889, in the record of the proceedings thereof in said entitled cause, before Hon. Henry W. Blodgett, district judge, is the following entry, to wit:

Order.

EDWARD S. RICHARDS
vs.
CHICAGO AND GRAND TRUNK RAILROAD COMPANY *et al.* } In Chancery.

The court, having considered the defendants' petition for a rehearing herein, sustains said petition and grants a rehearing of said cause.

25 Afterward, to wit, on the fourteenth day of October, in the adjourned October term of said court, 1889, in the record of the proceedings thereof in said entitled cause, before Hon. Henry W. Blodgett, district judge, is the following entry, to wit:

Order.

EDWARD S. RICHARDS
vs.
CHICAGO AND GRAND TRUNK RAILROAD COMPANY *et al.* } In Chancery.

Now come the parties, by their solicitors, and the defendants' demurrer to the bill herein is submitted on briefs and taken under advisement by the court.

26 Afterward, to wit, on the twenty-first day of October, in the adjourned October term of said court, 1889, in the record of the proceedir gs thereof in said entitled cause, before Hon. Henry W. Blodgett, district judge, is the following entry, to wit:

Decree.

EDWARD S. RICHARDS
vs.
CHICAGO AND GRAND TRUNK RAILROAD COMPANY *et al.* } In Chancery.

Now come the parties, by their solicitors, and the court, having considered defendants' demurrer to the bill herein, now orders that the order entered herein July 15, 1889, overruling demurrer, be set aside, that said demurrer be now sustained, and that said bill be dismissed for want of equity at complainant's costs, and that execution issue. Thereupon complainant's solicitor prays an appeal from this order to the Supreme Court of the United States, which is allowed upon complainants filing an appeal bond in the penal sum of three hundred dollars, with surety to be approved by the court.

Afterward, to wit, on the seventeenth day of December, 1889, there was filed in said clerk's office an appeal bond in said entitled cause; which said appeal bond is in the words and figures following, to wit:

27 Know all men by these presents that we, Edward S. Richards, as principal, and William A. Gardner, as surety, are held and firmly bound unto The Chicago and Grand Trunk Railway, The Board of Trade of Chicago, and John Walker in the full and just sum of three hundred dollars, to be paid to the said The Chicago and Grand Trunk Railway Company and John Walker, their certain attorney, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this 17th day of December, in the year of our Lord one thousand eight hundred and eighty-nine.

Whereas lately, at a term of the United States circuit court for the northern district of Illinois, begun October 7th, 1889, to wit, on October 21st, 1889, in a suit depending in said court between Edward S. Richards, as complainant, and The Chicago & Grand Trunk Company, The Board of Trade of Chicago, and John Walker, as defendants, it was ordered and decreed that the bill of complaint be dismissed for want of equity and a decree was rendered against the said Edward S. Richards for costs, to be taxed, and the said Edward S. Richards prayed and was allowed an appeal from said order and decree to the Supreme Court of the United States upon filing an appeal bond in the penal sum of three hundred dollars, with surety to be approved by the court:

28 Now, the condition of the above obligation is such that if the said Edward S. Richards shall prosecute his appeal to effect and answer all damages and costs if he fail to make his appeal good, then the above obligation to be void; else to remain in full force and virtue.

EDWARD S. RICHARDS. [SEAL.]
WILLIAM A. GARDNER. [SEAL.]

Sealed and delivered in presence of—
FRANK F. REED.

Approved by—
H. W. BLODGETT, *Judge.*

Endorsed: Filed Dec. 17, 1889. Wm. H. Bradley, clerk.

29 NORTHERN DISTRICT OF ILLINOIS, } ss:
Northern Division, }

I, William H. Bradley, clerk of the circuit court of the United States for the said northern district of Illinois, do hereby certify the above and foregoing to be a true and correct transcript of the record of all the proceedings had in said court in the cause wherein Edward S. Richards is complainant and Chicago and Grand Trunk Railroad Company, The Board of Trade of Chicago, and John Walker are defendants, as the same appears from the records and files of said court now remaining in my custody and control.

Seal of Circuit Court U. S., Northern Dist. Illinois, 1855.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at my office, in Chicago, in said district, this twelfth day of September, 1891.

WM. H. BRADLEY, *Clerk.*

30 UNITED STATES OF AMERICA, } ss:
Northern District of Illinois, }

To Chicago and Grand Trunk Railroad Company, The Board of Trade of Chicago, and John Walker, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, D. C., on the seventh

day of October, A. D. 1891, pursuant to a decree entered of record in the circuit court of the United States for the northern district of Illinois, wherein Edward S. Richards is complainant and you are defendants, to show cause, if any there be, why the decree mentioned should not be corrected and speedy justice should not be done to the parties in that behalf.

Witness the Hon. Walter Q. Gresham, judge, this 8th day of September, in the year of our Lord one thousand eight hundred and ninety-one.

WALTER Q. GRESHAM.

SEPT. 9, '91.

Service accepted for The Chicago and Grand Trunk Railway Co.
GEO. PAYSON, *Sol'r.*

31 *Assignment of Errors.*

In the Supreme Court of the United States.

EDWARD S. RICHARDS, Complainant in Error, *vs.* CHICAGO & GRAND TRUNK RAILway Company, The Board of Trade of Chicago, and John Walker, Defendants in Error.	In Equity. Error to the Circuit Court of the United States for the Northern District of Illinois.

And now comes said Edward S. Richards, by Charles K. Offield, his attorney in the above-entitled cause, and says that in the record and proceedings of the said circuit court of the United States for the northern district of Illinois, in this cause, wherein said Edward S. Richards was complainant and said Chicago & Grand Trunk Railway Company, The Board of Trade of Chicago, and John Walker are defendants, and in the rendition of the final decree and judgment entered in said cause in favor of said defendants and against said complainant there is manifest error in the following, among other things:

First. That the circuit court erred in sustaining the demurrer of said defendants and dismissing the complainant's bill for want of equity at complainant's costs.

Second. The circuit court erred in rendering decree and judgment against said complainant.

Third. The circuit court erred in rendering decree and judgment against said complainant and in not rendering decree and judgment against said defendants.

Fourth. That the circuit court erred in granting defendants' petition for rehearing of the demurrer of said defendants.

32 Fifth. That the circuit court erred in setting aside the order entered herein July 15, 1889, overruling the demurrer of said defendants.

Sixth. That the said decree, judgment, and proceedings were otherwise manifestly irregular, uncertain, informal, and contrary to law.

Wherefore the said complainant in error prays that for the errors aforesaid the said final decree and judgment of the circuit court against the said complainant in error may be annulled, reversed, and altogether made as nothing, and that this cause may be remanded to the said circuit court with directions to correct all and singular the errors aforesaid, and thereupon to enter decree and judgment in favor of said complainant in error, to the end that justice may be done, &c.

EDWARD S. RICHARDS,
By CHARLES K. OFFIELD,
His Attorney.

Endorsed on cover: Case No. 14,878. N. Illinois C. C. U. S. Term No., 312. Edward S. Richards, appellant, *vs.* The Chicago & Grand Trunk Railroad Company, The Board of Trade of Chicago, and John Walker. Filed October 6th, 1891.

158 399

Office Supreme Court, U.
FILED.
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JAMES H. McKENNEY,
Clerk

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1894.

Edward S. Richards,
Appellant,
vs.
The Chase Elevator Company, and Henry J. Chase, President,
Appellees.

DEMURRER.

EQUITY. No. 310.

Appeal from Circuit Court of the United States for the Northern District of Illinois.

BRIEF AND ARGUMENT FOR COMPLAINANT APPELLANT

BY

C. K. OFFIELD.

THE GUNTHORP-WARREN PRINTING COMPANY, 68 DEARBORN ST., CHICAGO.

IN THE

SUPREME COURT OF THE UNITED STATES,

OCTOBER TERM, 1894.

Edward S. Richards,
Appellant,

vs.

The Chase Elevator Company, and Henry J. Chase, President,
Appellees.

DEMURRER.

EQUITY. No. 310.

Appeal from Circuit Court of the United States for the Northern District of Illinois.

BRIEF AND ARGUMENT FOR COMPLAINANT APPELLANT

BY C. K. OFFIELD.

GENERAL STATEMENT OF CASE AS TO PARTIES AND SUBJECT-MATTER.

MAY IT PLEASE THE COURT:

Upon the 23d day of January, A. D. 1889, the complainant appellant, Mr. Edward S. Richards, filed his Bill of Complaint against the above named defendant appellees, The Chase Elevator Company and Henry J. Chase President, alleging an infringement of his letters patent, bearing date of November 16, 1884, and numbered 308,095, for a new and useful improvement in grain transferring apparatus.

The inventor and complainant appellant is a citizen of Illinois, resident of Chicago, and the defendant appellees are also citizens of Chicago and Illinois.

The Bill of Complaint is substantially in the usual form in patent causes, having a copy of the patent sued upon attached thereto as an exhibit part thereof; charging a joint infringement, praying an accounting and injunction, etc. (Rec., 1, 2, 3, 4.)

Subpœnas were duly issued and served upon all the defendant appellees. (Rec., 8.) Upon March 4, 1889, the appearances of all defendant appellees were entered by their respective counsel. (Rec., 9.) Afterwards upon the 28th day of March, A. D. 1889, the defendant appellees through their counsel respectively, Mr. George Payson in behalf of the defendant appellees filed their joint and several demurrer in the above cause; the gravamen of which is contained in three special clauses as follows:

"*First.* That the complainant's said Bill of Complaint, "in case the same were true, which these defendants in "nowise admit, contains not any matter of equity where- "on this court can ground any decree or give the com- "plainant any relief or assistance as against these defend- "ants or any or either of them.

"*Second.* That the said letters patent granted to said "Edward S. Richards, November 18, 1884, are wholly "void on their face for want of patentable novelty and "invention.

"*Third.* That both of the claims in the said patent "are wholly void as being for aggregations merely and "not for patentable combinations." (Rec., 9, 10.)

This demurrer came on for hearing and argument before his Honor, Judge Henry W. Blodgett, upon the 8th day of July, 1889, and was, after a careful and patient hearing, taken under advisement. (Rec., 10.) And upon July 15, 1889, said demurrer was overruled and on motion of the said George Payson, Esq.: "The "time for defendants to answer is extended to the 15th "day of September next, if they so elect."

Upon September 2, 1889, the said defendant appellees by Mr. Payson, their solicitor, presented their petition for rehearing. (Rec., 11.) And upon the 7th day of October, 1889, said petition for rehearing was submitted upon briefs and taken under advisement. (Rec., 12.) Upon October 21, 1889, his Honor, Judge Blodgett ordered the order of July 15, 1889, overruling said demurrer, set aside, and thereupon, sustained the demurrer, and ordered that: "The bill be dismissed for want of equity at complain- "ant's costs." (Rec., 12.)

Complainant appellant immediately upon the entry of the last above order, prayed an appeal to the Supreme Court of the United States, which was immediately allowed and bond filed. (Rec., 12.) Citation being duly issued and accepted for the railroad company defendant, September 9, 1891. (Rec., 14.)

Assignment of errors was duly lodged in this court upon the 6th day of October, 1891, containing the following specific charges of error:

"*First.* That the Circuit Court erred in sustaining "the demurrer of said defendants and dismissing the com- "plainant's bill for want of equity at complainant's "costs.

"*Second.* The Circuit Court erred in rendering "decree and judgment against said complainant.

"*Third.* The Circuit Court erred in rendering decree "and judgment against said complainant and in not ren- "dering decree and judgment against said defendants.

"*Fourth.* That the Circuit Court erred in granting "defendants' petition for rehearing of the demurrer of "said defendants.

"*Fifth.* That the Circuit Court erred in setting aside "the order entered herein July 15, 1889, overruling the "demurrer of said defendants.

"*Sixth.* That the said decree, judgment and proceed- "ings were otherwise manifestly irregular, uncertain, in- "formal and contrary to law." (Rec., 14.)

We take it that whatever possible merit there can be in defendant appellees' demurrer, is contained and represented entirely by the second and third clauses assigned, namely:

"*Second. That the said letters patent granted to "said Edward S. Richards, November 18, 1884, are "wholly void on their face for want of patentable novelty "and invention.*

"*Third. That both of the claims in the said patent "are wholly void as being for aggregations merely, and "not for patentable combinations.*" (Rec., 9, 10.)

We will now take up said second and third clauses in the order above named, and present and analyze the same to your Honors with an entire confidence and belief that we can thus unqualifiedly convince this court of the unsoundness and injustice of each of these clauses of demurrer, and their utter futility to compass the death of the Richards patent in suit, under the law and the facts applicable thereto.

This Richards patent as to its drawings, specifications and claims, to anyone skilled in the industry to which it relates, is without difficulty to understand. It has for its sole object and purpose the radical advancement and improvement in the carrying out of one of the greatest industries of the world's commerce.

Mr. Richards, without circumlocution, elaboration or prolixity, clearly states in his patent, his invention, gist and substance. He first states in the preamble of his patent, that he has "invented certain new and useful Im- "provements in Grain Transferring Apparatus." Immediately thereafter, in his patent, he states in detail the purpose and object of his invention and patent as follows:

"The purpose of my invention is to provide improved "means for transferring and weighing grain without "mixing different lots or loads with each other, thus pre- "serving the identity of each lot, while it is being trans- "ferred from one car to another."

Further along in his specifications, after discussing his mechanical devices for carrying out his invention, the patentee confirms his opening statement of invention, when he says: "The operation so far as now described is com- "plete, and the grain has been weighed and transferred, "so as not to be mixed with other grain or lots of grain."

The statement of Mr. Richards' invention briefly analyzed resolves itself into two parts: (1) Improved means in weighing grain. (2) So weighing the grain by such improved means as not to mix one lot with another while transferring such grain from one car to another.

The art of weighing and transferring grain before the Richards invention and patent, was well defined and of long practice, old and well known. It consisted in run-

ning a carload of grain upon track scales, *i. e.*, scales forming part of the track, weighing the car and the grain as a unit, then shoveling the grain into another car or into an elevator, and then weighing the empty car to determine the net weight of the removed grain. This system and procedure had marked defects and disadvantages. Snow and ice, dirt and mud, rain and sun, irrespective of any other facts and conditions, caused a substantial variance between the supposed and the actual weight of the grain when first placed in the car, and its reported weight when removed or transferred from the car at the end of its journey. The loaded cars were usually weighed without uncoupling upon the track scales, thus introducing another uncertain element as against the true weight of the grain.

Again, it was the common and universal custom before the Richards invention of the patent in suit, when by reason of the slowness of the process of the transferring of the grain from one car to another by track weighing, and hand manipulation, to house or store the grain for indefinite periods of time in grain elevators or buildings of large capacity. Theoretically, such elevator buildings were divided into compartments for the purpose of separating the grain received into classes or lots, according to the grade or quality of the grain, so received, but practically such separation was a matter of much difficulty, depending solely upon individual judgment and volition, supplemented thereto oft-times with carelessness and dishonesty, in the practical carrying out of the system, so that with great frequency in practical application, the second and third grades of grain went into the first grade compartment and *vice versa*. The result and practice of these conditions and systems in Chicago alone, became a

national, if not, world wide scandal, and in the year 1884 and 1885 seriously threatened the grain trade of Chicago itself and actually diverted for a time, the weighing and transferring of the grain of the north-west from the City of Chicago to the City of Milwaukee as to some of the principal common carriers having their terminus in the City of Chicago.

Owners and shippers of grain of all kinds openly claimed that by the old system they were defrauded and cheated, in the first instance in the track weighing process and shoveling from car to car, and in the second instance by the commingling of the first grade grain with the second and third grade qualities, and that such system of weighing, transferring and storing grain was vicious and unfair, even if conducted honestly, with good judgment and with every intention of accuracy and fairness of result.

It was the necessity for a remedy for these evils and defects that gave rise to and produced the invention of the Richards patent in suit. There is not the slightest doubt that the invention of Richards, as evidenced by his patent as here present, was and is a solution of the entire problem, and want, and is so recognized by the shipper, carrier and consumer of grain. By the Richards mechanical combinations as shown by his patent, co-acting one with another, the grain contained in one car is transferred to another selected car, either upon the same or an opposite track by a single continuous operation, the grain itself being weighed *in transitu*, and preserving the identity of each lot of grain without any possibility of commingling one lot with another in the operation.

It will be seen at once, also, that these weighing and transferring grain devices of Richards' patent do away

entirely with the grain elevator buildings of this country, such buildings costing at a minimum about $100,000, and the maximum about $2,000,000, with all the attending expenses of insurance, operating expenses and repairs, aside from the interest on capital invested, etc., etc.

Moreover, many railroad companies will not allow either their passenger or freight cars to be run off their own tracks, thus necessitating a mechanical transfer, so far as grain products are concerned, at the terminus of every different railroad, or several grain transfers on through shipments of grain to distant points. Such transfer can be made by the Richards inventions and devices at the rate of four cars of grain in eight minutes at a minimum cost per car.

More specifically stated, the Richards invention as shown by his patent operates as follows:

The loaded car of grain is run upon the track, and the empty car to receive such grain upon the same or opposite track. The door of the grain car is then opened opposite the receiving chute for the grain, and the grain then descends by gravity into the chute or is automatically shoveled into such chute by a steam shovel as suggested in Richards' patent, when necessary; the grain dsscends in the chute to the bottom of the elevator leg, where it is taken by the traveling buckets and carried to the elevated hopper upon and constructed as a part of the elevated hopper scales, where it is there weighed automatically or otherwise, and upon the releasing of the valve registering the desired weight, the grain descends through the spout into the receiving car, thus completing the entire operation of the weighing and transferring of grain in the most simple and effect manner with a result, positive, certain and without the slightest opportunity

for mistake or criticism as to the means employed or the result obtained.

Mr. Richards in his patent somewhat more fully describes the operation of his devices represented by his two claims, with special reference to letter identifications of the parts employed and for a more convenient reference, we herewith quote from his specifications such descriptive matter of such operation:

"I transfer and weigh the grain in the following manner: The car to be unloaded—for example, the car "B—is drawn upon the track F and allowed to stand in "such a position that the door will be directly opposite "the chute J. If the grain is to be transferred to a car "opposite or about opposite the car B—for example, to "the car D—I close the door or valve L, and open the "valve K. The grain is then shoveled from the car by "means of a steam shovel, or otherewise, into the chute "J, from which it passes into the elevator leg through "which the buckets move upward. The grain is thus "elevated and discharged into the hopper of the hopper-"scales located for discharging its contents into the car "D. That hopper has its valve closed while being filled, "and when full the grain therein is weighed and dis-"charged into the car intended to receive it.

"The operation, so far as now described, is complete, "and the grain has been weighed and transferred so as "not to be mixed with other grain or lots of grain. It "may sometimes happen, however, that it may be either "necessary or desirable to transfer the grain from one "car to another not opposite the car to be unloaded; in "other words, I may wish to transfer the grain from the "car B to the car E when the said cars are arranged with "relation to each other as represented in Fig. 3. In such

"case I close the door or valve K and open the door or "valve L and set the conveyer in operation. I also open "one of the slides or valves O in the conveyer-way, the "valve so opened permitting the conveyer-way to com- "municate with the boot forming a part of the elevating "apparatus for elevating the grain into the hopper dis- "charging into the car E. By this means the grain dis- "charged into the conveyer-way will be carried to the "open door O, pass through that door, be elevated, dis- "charged into a hopper and weighed, and then discharged "into the car E.

"The conveyer I employ only for the purpose of en- "abling me to transfer the grain to a car not opposite the "car being unloaded; but it will be perceived that some "of the principal features of my invention will be brought "into use if the elevators and hopper-scales are not du- "plicated, and that the grain may be transferred and "weighed without being mixed with other grain when "only one elevator and hopper-scale are employed. In "the latter case the conveyer is not essential, and is only "essential for the purposes described."

The claims of the Richards patent are two in number, and for more convenient reference we herewith quote the same:

"1. The combination of a fixed or stationary build- "ing, the tracks F and G, an elevator apparatus, and "elevated hopper-scales having a fixed or stationary hop- "per provided with with a valve or slide in its bottom, "and a discharge spout P, adapted and arranged for dis- "charging the grain directly from the said hopper into a "car, substantially as specified and for the purposes set "forth.

"2. The combination of a fixed or stationary build-

"ing, the tracks F and G, two or more elevating appa-
"ratus, a series of two or more elevated hopper-scales,
"having fixed or stationary hoppers, each having a valve
"or slide in its bottom, the discharge spouts P P,
"adapted and arranged for discharging the grain directly
"from the said hoppers, respectively, into a correspond-
"ingly arranged car, a horizontal conveyer, the chutes
"J J, having therein the doors or valves K and L, and
"the slides or doors O O, all arranged substantially as
"shown and described, with relation to each other and
"for the purposes set forth."

It would seem that a patent so clear and obviously useful upon its face, with mechanisms so simple and accurate in their character to produce a desired result, would bar any possibility of conclusion of the invalidity of such patent "on its face," by reason of the absence therefrom of patentable novelty. Our reasons for the above statement, aside from the fact of their self-evident character, will more fully appear in the discussion of the second sustained ground of demurrer, and we here quote defendant appellee's second ground of demurrer preliminary to a discussion of the same, which is as follows:

"*Second. That the said letters patent granted to*
"*said Edward S. Richards November 18, 1884, are*
"*wholly void on their face for want of patentable nov-*
"*elty and invention.*"

We are well aware of the fact that this court has in one or two instances said in plain terms that it is within the power of an equity court to declare a patent void upon its face for want of invention, as in the case of *Brown* v. *Piper*, 91 U. S., 37, where the court said: "Examined by the light of these considerations, we think "this patent was void on its face, and that the court

"might have stopped short at that instrument, and with-
"out looking beyond it into the answers and testimony,
"*sua sponte*, if the objection were not taken by counsel,
"well have adjudged in favor of the defendant."

And the case of *Lawson* v. *Grand Street, etc., Railroad*, 107 U. S., 649, where the Court said: "It would ill
"become a court of equity to render money decree in
"favor of a complainant for the infringement of a patent,
"which the court could see was void on its face for want
"of invention."

But we know of no case where this court has ever, as a matter of fact so found and declared independently of the record made and other questions involved.

We suppose, if a man should succeed in obtaining a patent upon hot water or a right angle triangle, such patent might be declared invalid on its face, if it was perfectly plain that the patent did, and could, mean nothing else, than these old common and well known products and devices, but no such condition is here present, and it is a somewhat suggestive fact in this connection, that the learned circuit judge, from whose circuit this appeal is taken, upon full argument made, in the first instance, overruled the demurrer here present, a result entirely antagonistic to the assertion that the Richards patent is void on its face for want of patentable novelty.

Patents are the result of a careful proceeding in the Patent Office to determine, not only the right of grant of the patent itself as representing an invention as shown by the Patent Office knowledge and records existing solely for that purpose; but also drawing hard and fast lines as to the scope and meaning of the instrument itself by requiring disclaimers and restrictions before issue from the Office

under the sanction of the seal of the government, and this court has with unvarying frequency declared the patent to be *prime facie* evidence of its validity and its claimed novelty and utility of invention.

Railroad Co. v. *Stimpson*, 14 Peters, 448.
Agawam Co. v. *Jordan*, 7 Wall., 583.
Lehnbeuter v. *Holthaus*, 105 U. S., 94.

The decisions of this court follow each other in rapid and unbroken succession from the first to the last volume of issue, to the end and effect that patents and the patent law should be construed liberally and favorably to sustain the patent.

Comr. v. *Whitely*, 4. Wall, 522.
Newell v. *Yoeman*, 94 U. S., 568.

In the case of *Providence Rubber Co.* v. *Goodyear*, 9 Wall, 788, this court said that: "A patent should be construed in a liberal spirit to sustain the just claims of the "inventor."

In the case of *Klein* v. *Russell*, 9 Wall, 466, this Court said, that the "Court should proceed in a liberal spirit, "so as to sustain the patent with the patentee's construction, if consistent with his language."

The books are full of cases at the Circuit where this doctrine of liberality in the construction of patents has been accepted and applied.

It is entirely apparent from a study of the cases of this court, that the question of patentability or invention has frequently been determined by evidence or proof in the records of the acquiescing in the patent and its adoption by persons able to defeat it and interested in its defeat, and that

the utility and admitted advantages over other devices in the old art to which it belongs, frequently determines the question of patentability.

Loom Co. v. *Higgins*, 105 U. S., 580.
Valve Co. v. *Valve Co.*, 113 U. S., 157.
McGowan v. *Packing Co.*, 141 U. S., 332.
The Barb Wire case, 143 U. S., 275.

We respectfully submit that nothing could be more unjust and unfair to any patentee than to extinguish his patent as attempted in this case solely by demurrer, where there is even a possibility that the question of invention and patentability may be determined in his favor by full testimony taken in accordance with these decisions.

We respectfully submit, also, that the three cases in this court, here presented together, are abundant proof that these several defendant appellees deemed this Richards patent and devices and inventions of sufficient importance and value to appropriate the same exactly and precisely as produced by Richards, and to cling to such inventions and devices through the vicissitudes of patent litigation, and employ expensive counsel to aid them so to do.

It is another significant fact, also, in determining the correctness of this assertion of invalidity of this Richards patent as being void on its face for want of patentable novelty, that another of the great railroad corporations of the country, namely, The Michigan Southern and Lake Shore Railroad, at one time recognized the enormous value of Mr. Richards' inventions and devices, and set aside a location adjoining their tracks in Chicago, especially for the establishment and employment of such inventions, and have been forced by judicial determination to pay under

such recognition more than one hundred thousand dollars, including interest allowed, for the use of the inventions of the patent in suit.

We believe that the Supreme Court reports of the different states and the decisions and papers of such courts when reported, are volumes of which this court will take judicial notice.

In the case of *Brown* v. *Piper*, 91 U. S., 42, this Court speaking upon this question of judicial notice, states as follows:

"The courts of the United States take judicial notice "of the ports and waters of the United States where the "tide ebbs and flows, of the boundaries of the several "states and the judicial districts, and of the laws and juris- "prudence of the several states in which they exercise "jurisdiction. Courts will take notice of whatever is "generally known within the limits of their jurisdiction; "and if the judge's memory is at fault. he may refresh "it by resorting to any means for that purpose which he "may deem safe and proper."

The case of *Lake Shore & Michigan Southern Railroad* v. *Edward S. Richards*, 152 Ill. Rep., 59, is instructive and controlling in a high decree upon the question of the novelty or validity of this Richards patent, simply upon a face reading and inspection of the same. The defendant appellee in the above case, Mr. Edward S. Richards, is complainant appellant in this case. The above Illinois Supreme Court case discloses the fact that the Lake Shore and Michigan Southern Railroad Company at one time recognized the value of Mr. Richards' invention and employed the same for an agreed length of time, to the exclusion of the old systems and devices in the weighing and transferring of grain, and

continued such use until evidently some patent lawyer discovered that Mr. Richards' patent did not represent patentable novelty and was a mere aggregation. The above railroad company were to pay as compensation and royalty for the invention in question one-half of the net savings to them by reason of such inventions over the old system and nothing more. No more conclusive testimony can be given of the patentability and value of Mr. Richards' inventions as judicially recognized in the above case, than by a quotation from the case itself.

The undisputed facts of the old devices and systems of weighing and transferring grain being recognized and stated in the decision, and the advantages of the inventions of Mr. Richards' patent in suit over the same, being also stated.

The decision is of great length and upon these questions states as follows:

"At that time the transfer of such grain was accom-
"plished by placing the loaded and empty cars side by
"side on parallel tracks, and by shoveling the grain from
" one car to the other by hand. The weighing was done
" on track scales, by first weighing the loaded car and
" then weighing it after it was unloaded, the difference
" between such weights being the weight of the grain.
" This process was expensive, and the weights thus ob-
" tained, as the evidence tends to show, were, owing to a
" variety of causes, liable to be inaccurate. Richards,
" the plaintiff, was the inventor and patentee of a new
" process for weighing and transferring grain in bulk,
" which was claimed to be cheaper than the old
" method, and which furnished more accurate
" weights than could be had by the existing mode of
" weighing. By this process the loaded cars of grain

"were run on to an elevated track in a trans-
"fer house, and empty cars were placed alongside of
"them on a lower track. The grain was then shoveled
"by steam shovels from the loaded cars into hoppers,
"where it was weighed, and then allowed to run, by
"force of gravity, into the empty cars below. Negotia-
"tions were thereupon entered into between Richards and
"the defendant company, with a view to the adoption by
"the latter of this new mode of weighing and transferring
"grain, and these negotiations resulted in a written con-
"tract between the company of the first part, and Rich-
"ards, of the second part, bearing date January 2, 1884,
"which contract was afterwards assigned by Richards to
"the firm of Richards, Maynard & Co., consisting of
"Richards and John W. Maynard. Said contract re-
"cited, by way of preamble, that one of its objects was
"to provide a cheaper method of transfering grain, mill-
"feed and seed from one car to another than the
"one employed by said company, and for that pur-
"pose to use the device of Richards secured to him by
"letters patent, etc., and that Richards intended to erect
"and build a grain transfer house on the land thereinafter
"described, for the purpose of so handling, weighing and
"transferring in bulk such grain, mill-feed and seed as
"might be delivered to him for that purpose by the com-
"pany. The company then agreed, in consideration of
"the nominal rental of $10 per year, and of the covenants
"in the contract to be kept and performed by Richards,
"to lease to him for the term of ten years, certain land
"upon which to erect such transfer house and the neces-
"sary approaches thereto, and also agreed that, as soon as
"such transfer house and approaches were constructed, it
"would build and maintain thereon, and through such

"transfer house, such track or tracks as might be necessary "to transact the business contemplated by said agreement, "and do all switching of loaded and empty cars to and "from said transfer house at its own expense and without "cost to Richards, provided that the actual cost thereof "should be taken into account in determining the fair "amount to be paid Richards, as provided in the follow- "ing covenants:

"'Third: Said first party further covenants and agrees "that in case there shall be any saving to it, in switch- "ing, weighing and transferring of products in this "agreement referred to, through the methods and "devices adopted by said second party, over and above "the actual cost of doing the same work under the ways "and methods now in use by said first party, then and in "that event it will pay to second party one-half of said "saving, the just and actual amount thereof to be ascer- "tained and determined as provided in covenant 'First' "'of Mutual Covenants,' said amounts, if found due, to "be paid to said second party on or before the middle "of each month for the month preceding."

It also appears further by this decision that a verdict of $75,000 was rendered in favor of Richards as savings by reason of his invention under the above quoted third clause, and that a previous judgment had been obtained by him against the same company for the use of his inventions for the sum of $9,000, reported in the 126 Illinois Reports, 448. Such case also discloses the enormous profit and advantage accruing by reason of the employment of the inventions of Mr. Richards' patent over the most successful and best known devices employed for that purpose.

It would seem, indeed, that an invention recognized by

one of the most powerful railroad corporations of the country, notoriously able and willing to contest every claim made upon it, from the Federal government down to the day laborer, whose only cow they kill upon their track, and for which recognition they contribute by judicial finding more than $80,000, proves conclusively that an invention and a patent thus recognized and paid for cannot be void on its face and so determined by the simple reading thereof.

There is another fact and condition also of which this court can, as we understand it, and will if they so can, take judicial notice, which bears strongly upon the question of the validity of this Richards patent in suit.

The legislature of the State of Illinois has recognized the great value and utility of this invention of Richards, and upon the 25th day of May, 1887, passed an act which has been the law of the State of Illinois ever since, compelling parties to employ the inventions and devices of Richards in the weighing and transferring of grain carried by them. This law, while it does not mention in terms the Richards patent, just as clearly identifies that patent and its devices as if the same was specified by title, number and date.

It is a well known fact of which the published legislative proceedings of the State of Illinois, in connection with the passage of such act, clearly sets forth, that such act was passed at the instigation and demands of a great body of citizens petitioning the legislature so to do, and in such petition specifying the patented inventions and the patent itself of Mr. Richards in suit. Such law is found in Hurd's Revised Statutes of Illinois, of 1893, p. 1142, and for more convenient reference, we here cite the act itself as follows :

"An act relating to the receipt, shipment, transportation
"and weighing of grain in bulk by railroad com-
"panies.

"SECTION 1. Be it enacted by the People of the "State of Illinois, represented in the General Assembly: "That in all counties of the third class, and in all cities "having not less than 50,000 inhabitants, where bulk "grain, millstuffs or seeds are delivered by any railroad "transporting the same from initial points to another "road for transportation to other points, such road or "roads receiving the same for transportation to said "points or other connections leading thereto, shall pro- "vide suitable appliances for unloading, weighing and "transferring such property from one car to another "without mixing or in any way changing the identity "of the property so transferred, and such property shall "be accurately weighed in suitably covered hopper "scales, which will determing the actual net weight of "the entire contents of any car-load of grain, millstuffs "or seeds at a single draft, without gross or tare, and "which weights shall always be given in the receipts or "bills of lading and used as the basis of any freight "contracts affecting such shipments between such rail- "road companies and the owners, agents or shippers of "such grain, millstuffs or seeds so transported and trans- "ferred."

The act further provides that the different railroad companies can be compelled to comply with its provisions by a mandamus and fixes a penalty for refusing so to do, in each instance of "not less than $100, nor more than "$500." We again respectfully submit that this recognition of the great value and utility of Richard's inventions as exhibited by his patent in suit, by this legislative

enactment of the State of Illinois is such high tribute and recognition of such patent as forbids any contention of "its invalidity upon its face."

The third ground of defendant appellees demurrer is as follows:

"*Third. That both of the claims of the said patent "are wholly void as being for aggregations merely, and "not for patentable combinations.*"

We know of no case where any patent has ever been declared invalid or void upon its face by reason of any such asserted condition as represented by this third ground of demurrer. Many patents have been declared invalid as being for aggregations, where upon full proof taken, such condition appeared clearly to be the fact, but for any court to state antecedently that a combination of any claim of a patent was a mere aggregation of parts, and the patent therefore invalid, has not to our knowledge as yet happened.

No opinion was rendered by Judge Blodgett, and it is, of course, impossible to determine whether this third clause of demurrer had any weight with him; but whether it had or not is perfectly apparent on the face of the patent, that both claims represent a co-acting combination and not a mere aggregation of mechanical parts in hap-hazard juxtaposition without co-acting relation one with the other. This subject of aggregation and combination has recently been fully discussed in this court and the controlling authorities cited, in the case of *Palmer* v. *Corning*, 70 O. G., 1497; and we are entirely confident that even without proof of any description as to the connection and relevancy of the operative parts forming the combination of Richards claims, the one with the other, his patent is safe from any suggestive application of de-

fendant appellees' third ground of demurrer, under the last case of this court upon this subject *supra*.

It should be remembered, however, that the different elements going to make up the combination of a claim need not act simultaneously, but it is equally sufficient for them to act successively to produce a new and beneficial result. This proposition is well stated in the case of *Forbush* v. *Cook*, 2 Fish., 669, the court, CURTIS, J., there said:

"To make a valid claim for a combination, it is not "necessary that the several elementary parts of the com- "bination should act simultaneously. If those elementary "parts are so arranged that the successive action of each "contributes to produce some one practical result, which "result when attained is the product of the simultaneous "or successive action of all the elementary parts, viewed "as one entire whole, a valid claim for thus combining "those elementary parts may be made."

It is not contended that any one of the individual elements of the two relied upon claims of the Richards patent are new *per se* or are in themselves Mr. Richards' inventions. No rule of law however, is more firmly established in this court, than the proposition that the patent asserted cannot be defeated, upon the ground that the individual elements going to make up the combination are found separately in prior patents, printed publications, or machines.

Hailes v. *Van Wormer*, 20 Wall., 353.
Imhaueser v. *Buerk*, 101 U. S., 647.

The cases are nebulous to the effect that a new union of old elements is a new combination.

Rob. on Pats., Vol. 1, 223, and a full page of cases there cited.

CONCLUSION.

In conclusion, your honors, we most earnestly, hopefully and confidently contend and submit, that the defendant appellees have and must fail in their assertions of demurrer here presented for the reason alone that Richards' Letters Patent in question are good and valid upon their face under the presumption of law applicable thereto, and that upon their face, they in no wise, exhibit any suggestion of the absence of patentable novelty, nor as representing merely a juxtaposition of parts, characterizing a mere aggregation; and we confidently submit further that the record facts called to the attention of this honorable court and coming fully within the "judicial notice of this court," supplement, intensify and make certain the presumed novelty, and patentability of the combinations disclosed by Mr. Richards' Patent, and for these reasons, the decree of dismissal of complainant's bill of complaint below should be reversed, and this cause remanded.

Respectfully submitted.

C. K. OFFIELD.

Office Supreme Court, U.
FILED.
APR 20 1895
JAMES H. McKENNEY,
CLERK

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1894.

Edward S. Richards,
Appellant.

vs.

The Michigan Central Railroad Company, The Board of Trade of Chicago, and John Walker,
Appellees.

DEMURRER.

EQUITY. NO. 311.

Appeal from Circuit Court of the United States for the Northern District of Illinois.

BRIEF AND ARGUMENT FOR COMPLAINANT APPELLANT

BY

C. K. OFFIELD.

THE GUNTHORP-WARREN PRINTING COMPANY, 69 DEARBORN ST., CHICAGO.

IN THE

SUPREME COURT OF THE UNITED STATES,

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BRIEF AND ARGUMENT FOR COMPLAINANT APPELLANT

BY C. K. OFFIELD.

GENERAL STATEMENT OF CASE AS TO PARTIES AND SUBJECT-MATTER.

MAY IT PLEASE THE COURT:

Upon the 23d day of January, A. D. 1889, the complainant appellant, Mr. Edward S. Richards, filed his Bill of Complaint against the above named defendant appellees, The Michigan Central Railroad Company, The Board of Trade of Chicago and John Walker, alleging an infringement of his letters patent, bearing date of November 16, 1884, and numbered 308,095, for a new and useful improvement in grain transferring apparatus.

The inventor and complainant appellant is a citizen of Illinois, resident of Chicago, and the principal defendant appellees are great and powerful corporate organizations known and identified by the mere mention of their names respectively.

The Bill of Complaint is substantially in the usual form in patent causes, having a copy of the patent sued upon attached thereto as an exhibit part thereof; charging a joint infringement, praying an accounting and injunction, etc. (Rec., 1, 2, 3, 4.)

Subpœnas were duly issued and served upon all the defendant appellees. (Rec., 8.) Upon March 4, 1889, the appearances of all defendant appellees were entered by their respective counsel. (Rec., 9.) Afterwards upon the 28th day of March, A. D. 1889, the defendant appellees through their counsel respectively, Mr. George Payson in behalf of the Michigan Central Railroad Company, and Mr. Sidney Smith in behalf of the Board of Trade of Chicago and John Walker, filed their joint and several demurrer in the above cause; the gravamen of which is contained in three special clauses as follows:

"*First.* That the complainant's said Bill of Complaint, "in case the same were true, which these defendants in "nowise admit, contains not any matter of equity whereon "this court can ground any decree or give the complain- "ant any relief or assistance as against these defendants "or any or either of them.

"*Second.* That the said letters patent granted to said "Edward S. Richards, November 18, 1884, are wholly "void on their face for want of patentable novelty and "invention.

"*Third.* That both of the claims in the said patent "are wholly void as being for aggregations merely and "not for patentable combinations." (Rec., 9, 10).

This demurrer came on for hearing and argument before his Honor, Judge Henry W. Blodgett, upon the 8th day of July, 1889, and was, after a careful and patient hearing, taken under advisement. (Rec., 10.) And upon July 15, 1889, said demurrer was overruled and on motion of the said George Payson, Esq.: "The "time for defendants to answer is extended to the 15th "day of September next, if they so elect."

Upon September 2, 1889, the said defendant railroad company by Mr. Payson, its solicitor, presented a petition of said defendant railroad company for a rehearing. (Rec., 11.) And upon the 7th day of October, 1889, said petition for rehearing was submitted upon briefs and taken under advisement. (Rec., 12.) Upon October 21, 1889, his Honor, Judge Blodgett ordered the order of July 15, 1889, overruling said demurrer, set aside, and thereupon, sustained the demurrer, and ordered that: "The bill be dismissed for want of equity at complain- "ant's costs." (Rec., 12.)

Complainant appellant immediately upon the entry of the last above order, prayed an appeal to the Supreme Court of the United States, which was immediately allowed and bond filed. (Rec., 12.) Citation being duly issued and accepted for the railroad company defendant, September 9, 1891. (Rec., 14.)

Assignment of errors was duly lodged in this court upon the 6th day of October, 1891, containing the following specific charges of error:

"*First.* That the Circuit Court erred in sustaining "the demurrer of said defendants and dismissing the com- "plainant's bill for want of equity at complainant's "costs.

"*Second.* The Circuit Court erred in rendering "decree and judgment against said complainant.

"*Third.* The Circuit Court erred in rendering decree "and judgment against said complainant and in not ren- "dering decree and judgment against said defendants.

"*Fourth.* That the Circuit Court erred in granting "defendants' petition for rehearing of the demurrer of "said defendants.

"*Fifth.* That the Circuit Court erred in setting aside "the order entered herein July 15, 1889, overruling the "demurrer of said defendants.

"*Sixth.* That the said decree, judgment and proceed- "ings were otherwise manifestly irregular, uncertain, in- "formal and contrary to law." (Rec., 14.)

We take it that whatever possible merit there can be in defendant appellees' demurrer, is contained and represented entirely by the second and third clauses assigned, namely:

"*Second. That the said letters patent granted to "said Edward S. Richards, November 18, 1884, are "wholly void on their face for want of patentable novelty "and invention.*

"*Third. That both of the claims in the said patent "are wholly void as being for aggregations merely, and "not for patentable combinations.*" (Rec., 9, 10.)

We will now take up said second and third clauses in the order above named, and present and analyze the same to your Honors with an entire confidence and belief that we can thus unqualifiedly convince this court of the unsoundness and injustice of each of these clauses of demurrer, and their utter futility to compass the death of the Richards patent in suit, under the law and the facts applicable thereto.

This Richards patent as to its drawings, specifications and claims, to anyone skilled in the industry to which it relates, is without difficulty to understand. It has for its sole object and purpose the radical advancement and improvement in the carrying out of one of the greatest industries of the world's commerce.

Mr. Richards, without circumlocution, elaboration or prolixity, clearly states in his patent, his invention, gist and substance. He first states in the preamble of his patent, that he has "invented certain new and useful Im- "provements in Grain Transferring Apparatus." Immediately thereafter, in his patent, he states in detail the purpose and object of his invention and patent as follows:

"The purpose of my invention is to provide improved "means for transferring and weighing grain without "mixing different lots or loads with each other, thus pre- "serving the identity of each lot, while it is being trans- "ferred from one car to another."

Further along in his specifications, after discussing his mechanical devices for carrying out his invention, the patentee confirms his opening statement of invention, when he says: "The operation so far as now described is com- "plete, and the grain has been weighed and transferred, "so as not to be mixed with other grain or lots of grain."

The statement of Mr. Richards' invention briefly analyzed resolves itself into two parts: (1) Improved means in weighing grain. (2) So weighing the grain by such improved means as not to mix one lot with another while transferring such grain from one car to another.

The art of weighing and transferring grain before the Richards invention and patent, was well defined and of long practice, old and well known. It consisted in run-

ning a carload of grain upon track scales, *i. e.*, scales forming part of the track, weighing the car and the grain as a unit, then shoveling the grain into another car or into an elevator, and then weighing the empty car to determine the net weight of the removed grain. This system and procedure had marked defects and disadvantages. Snow and ice, dirt and mud, rain and sun, irrespective of any other facts and conditions, caused a substantial variance between the supposed and the actual weight of the grain when first placed in the car, and its reported weight when removed or transferred from the car at the end of its journey. The loaded cars were usually weighed without uncoupling upon the track scales, thus introducing another uncertain element as against the true weight of the grain.

Again, it was the common and universal custom before the Richards invention of the patent in suit, when by reason of the slowness of the process of the transferring of the grain from one car to another by track weighing, and hand manipulation, to house or store the grain for indefinite periods of time in grain elevators or buildings of large capacity. Theoretically, such elevator buildings were divided into compartments for the purpose of separating the grain received into classes or lots, according to the grade or quality of the grain, so received, but practically such separation was a matter of much difficulty, depending solely upon individual judgment and volition, supplemented thereto oft-times with carelessness and dishonesty, in the practical carrying out of the system, so that with great frequency in practical application, the second and third grades of grain went into the first grade compartment and *vice versa*. The result and practice of these conditions and systems in Chicago alone, became a

national, if not, world wide scandal, and in the year 1884 and 1885 seriously threatened the grain trade of Chicago itself and actually diverted for a time, the weighing and transferring of the grain of the north-west from the City of Chicago to the City of Milwaukee as to some of the principal common carriers having their terminus in the City of Chicago.

Owners and shippers of grain of all kinds openly claimed that by the old system they were defrauded and cheated, in the first instance in the track weighing process and shoveling from car to car, and in the second instance by the commingling of the first grade grain with the second and third grade qualities, and that such system of weighing, transferring and storing grain was vicious and unfair, even if conducted honestly, with good judgment and with every intention of accuracy and fairness of result.

It was the necessity for a remedy for these evils and defects that gave rise to and produced the invention of the Richards patent in suit. There is not the slightest doubt that the invention of Richards, as evidenced by his patent as here present, was and is a solution of the entire problem, and want, and is so recognized by the shipper, carrier and consumer of grain. By the Richards mechanical combinations as shown by his patent, co-acting one with another, the grain contained in one car is transferred to another selected car, either upon the same or an opposite track by a single continuous operation, the grain itself being weighed *in transitu*, and preserving the identity of each lot of grain without any possibility of commingling one lot with another in the operation.

It will be seen at once, also, that these weighing and transferring grain devices of Richards' patent do away

entirely with the grain elevator buildings of this country, such buildings costing at a minimum about $100,000, and the maximum about $2,000,000, with all the attending expenses of insurance, operating expenses and repairs, aside from the interest on capital invested, etc., etc.

Moreover, many railroad companies will not allow either their passenger or freight cars to be run off their own tracks, thus necessitating a mechanical transfer, so far as grain products are concerned, at the terminus of every different railroad, or several grain transfers on through shipments of grain to distant points. Such transfer can be made by the Richards inventions and devices at the rate of four cars of grain in eight minutes at a minimum cost per car.

More specifically stated, the Richards invention as shown by his patent operates as follows:

The loaded car of grain is run upon the track, and the empty car to receive such grain upon the same or opposite track. The door of the grain car is then opened opposite the receiving chute for the grain, and the grain then descends by gravity into the chute or is automatically shoveled into such chute by a steam shovel as suggested in Richards' patent, when necessary; the grain dsscends in the chute to the bottom of the elevator leg, where it is taken by the traveling buckets and carried to the elevated hopper upon and constructed as a part of the elevated hopper scales, where it is there weighed automatically or otherwise, and upon the releasing of the valve registering the desired weight, the grain descends through the spout into the receiving car, thus completing the entire operation of the weighing and transferring of grain in the most simple and effect manner with a result, positive, certain and without the slightest opportunity

for mistake or criticism as to the means employed or the result obtained.

Mr. Richards in his patent somewhat more fully describes the operation of his devices represented by his two claims, with special reference to letter identifications of the parts employed and for a more convenient reference, we herewith quote from his specifications such descriptive matter of such operation:

"I transfer and weigh the grain in the following manner: The car to be unloaded—for example, the car "B—is drawn upon the track F and allowed to stand in "such a position that the door will be directly opposite "the chute J. If the grain is to be transferred to a car "opposite or about opposite the car B—for example, to "the car D—I close the door or valve L, and open the "valve K. The grain is then shoveled from the car by "means of a steam shovel, or otherewise, into the chute "J, from which it passes into the elevator leg through "which the buckets move upward. The grain is thus "elevated and discharged into the hopper of the hopper-"scales located for discharging its contents into the car "D. That hopper has its valve closed while being filled, "and when full the grain therein is weighed and dis-"charged into the car intended to receive it.

"The operation, so far as now described, is complete, "and the grain has been weighed and transferred so as "not to be mixed with other grain or lots of grain. It "may sometimes happen, however, that it may be either "necessary or desirable to transfer the grain from one "car to another not opposite the car to be unloaded; in "other words, I may wish to transfer the grain from the "car B to the car E when the said cars are arranged with "relation to each other as represented in Fig. 3. In such

"case I close the door or valve K and open the door or "valve L and set the conveyer in operation. I also open "one of the slides or valves O in the conveyer-way, the "valve so opened permitting the conveyer-way to com- "municate with the boot forming a part of the elevating "apparatus for elevating the grain into the hopper dis- "charging into the car E. By this means the grain dis- "charged into the conveyer-way will be carried to the "open door O, pass through that door, be elevated, dis- "charged into a hopper and weighed, and then discharged "into the car E.

"The conveyer I employ only for the purpose of en- "abling me to transfer the grain to a car not opposite the "car being unloaded; but it will be perceived that some "of the principal features of my invention will be brought "into use if the elevators and hopper-scales are not du- "plicated, and that the grain may be transferred and "weighed without being mixed with other grain when "only one elevator and hopper-scale are employed. In "the latter case the conveyer is not essential, and is only "essential for the purposes described."

The claims of the Richards patent are two in number, and for more convenient reference we herewith quote the same:

"1. The combination of a fixed or stationary build- "ing, the tracks F and G, an elevator apparatus, and "elevated hopper-scales having a fixed or stationary hop- "per provided with with a valve or slide in its bottom, "and a discharge spout P, adapted and arranged for dis- "charging the grain directly from the said hopper into a "car, substantially as specified and for the purposes set "forth.

"2. The combination of a fixed or stationary build-

"ing, the tracks F and G, two or more elevating appa-
"ratus, a series of two or more elevated hopper-scales,
"having fixed or stationary hoppers, each having a valve
"or slide in its bottom, the discharge spouts P P,
"adapted and arranged for discharging the grain directly
"from the said hoppers, respectively, into a correspond-
"ingly arranged car, a horizontal conveyer, the chutes
"J J, having therein the doors or valves K and L, and
"the slides or doors O O, all arranged substantially as
"shown and described, with relation to each other and
"for the purposes set forth."

It would seem that a patent so clear and obviously useful upon its face, with mechanisms so simple and accurate in their character to produce a desired result, would bar any possibility of conclusion of the invalidity of such patent "on its face," by reason of the absence therefrom of patentable novelty. Our reasons for the above statement, aside from the fact of their self-evident character, will more fully appear in the discussion of the second sustained ground of demurrer, and we here quote defendant appellee's second ground of demurrer preliminary to a discussion of the same, which is as follows:

"*Second. That the said letters patent granted to*
"*said Edward S. Richards November 18, 1884, are*
"*wholly void on their face for want of patentable nov-*
"*elty and invention.*"

We are well aware of the fact that this court has in one or two instances said in plain terms that it is within the power of an equity court to declare a patent void upon its face for want of invention, as in the case of *Brown* v. *Piper*, 91 U. S., 37, where the court said: "Examined by the light of these considerations, we think "this patent was void on its face, and that the court

"might have stopped short at that instrument, and with-
"out looking beyond it into the answers and testimony,
"*sua sponte*, if the objection were not taken by counsel,
"well have adjudged in favor of the defendant."

And the case of *Lawson* v. *Grand Street, etc., Railroad*, 107 U. S., 649, where the Court said: "It would ill "become a court of equity to render money decree in "favor of a complainant for the infringement of a patent, "which the court could see was void on its face for want "of invention."

But we know of no case where this court has ever, as a matter of fact so found and declared independently of the record made and other questions involved.

We suppose, if a man should succeed in obtaining a patent upon hot water or a right angle triangle, such patent might be declared invalid on its face, if it was perfectly plain that the patent did, and could, mean nothing else, than these old common and well known products and devices, but no such condition is here present, and it is a somewhat suggestive fact in this connection, that the learned circuit judge, from whose circuit this appeal is taken, upon full argument made, in the first instance, overruled the demurrer here present, a result entirely antagonistic to the assertion that the Richards patent is void on its face for want of patentable novelty.

Patents are the result of a careful proceeding in the Patent Office to determine, not only the right of grant of the patent itself as representing an invention as shown by the Patent Office knowledge and records existing solely for that purpose; but also drawing hard and fast lines as to the scope and meaning of the instrument itself by requiring disclaimers and restrictions before issue from the Office

under the sanction of the seal of the government, and this court has with unvarying frequency declared the patent to be *prima facie* evidence of its validity and its claimed novelty and utility of invention.

Railroad Co. v. *Stimpson*, 14 Peters, 448.
Agawam Co. v. *Jordan*, 7 Wall., 583.
Lehnbeuter v. *Holthaus*, 105 U. S., 94.

The decisions of this court follow each other in rapid and unbroken succession from the first to the last volume of issue, to the end and effect that patents and the patent law should be construed liberally and favorably to sustain the patent.

Comr. v. *Whitely*, 4. Wall, 522.
Newell v. *Yoeman*, 94 U. S., 568.

In the case of *Providence Rubber Co.* v. *Goodyear*, 9 Wall, 788, this court said that: "A patent should be construed in a liberal spirit to sustain the just claims of the "inventor."

In the case of *Klein* v. *Russell*, 9 Wall, 466, this Court said, that the "Court should proceed in a liberal spirit, "so as to sustain the patent with the patentee's construction, if consistent with his language."

The books are full of cases at the Circuit where this doctrine of liberality in the construction of patents has been accepted and applied.

It is entirely apparent from a study of the cases of this court, that the question of patentability or invention has frequently been determined by evidence or proof in the records of the acquiescing in the patent and its adoption by persons able to defeat it and interested in its defeat, and that

the utility and admitted advantages over other devices in the old art to which it belongs, frequently determines the question of patentability.

Loom Co. v. *Higgins*, 105 U. S., 580.
Valve Co. v. *Valve Co.*, 113 U. S., 157.
McGowan v. *Packing Co.*, 141 U. S., 332.
The Barb Wire case, 143 U. S., 275.

We respectfully submit that nothing could be more unjust and unfair to any patentee than to extinguish his patent as attempted in this case solely by demurrer, where there is even a possibility that the question of invention and patentability may be determined in his favor by full testimony taken in accordance with these decisions.

We respectfully submit, also, that the three cases in this court, here presented together, are abundant proof that these several defendant appellees deemed this Richards patent and devices and inventions of sufficient importance and value to appropriate the same exactly and precisely as produced by Richards, and to cling to such inventions and devices through the vicissitudes of patent litigation, and employ expensive counsel to aid them so to do.

It is another significant fact, also, in determining the correctness of this assertion of invalidity of this Richards patent as being void on its face for want of patentable novelty, that another of the great railroad corporations of the country, namely, The Michigan Southern and Lake Shore Railroad, at one time recognized the enormous value of Mr. Richards' inventions and devices, and set aside a location adjoining their tracks in Chicago, especially for the establishment and employment of such inventions, and have been forced by judicial determination to pay under

such recognition more than one hundred thousand dollars, including interest allowed, for the use of the inventions of the patent in suit.

We believe that the Supreme Court reports of the different states and the decisions and papers of such courts when reported, are volumes of which this court will take judicial notice.

In the case of *Brown* v. *Piper*, 91 U. S., 42, this Court speaking upon this question of judicial notice, states as follows:

"The courts of the United States take judicial notice "of the ports and waters of the United States where the "tide ebbs and flows, of the boundaries of the several "states and the judicial districts, and of the laws and juris- "prudence of the several states in which they exercise "jurisdiction. Courts will take notice of whatever is "generally known within the limits of their jurisdiction; "and if the judge's memory is at fault. he may refresh "it by resorting to any means for that purpose which he "may deem safe and proper."

The case of *Lake Shore & Michigan Southern Railroad* v. *Edward S. Richards*, 152 Ill. Rep., 59, is instructive and controlling in a high decree upon the question of the novelty or validity of this Richards patent, simply upon a face reading and inspection of the same. The defendant appellee in the above case, Mr. Edward S. Richards, is complainant appellant in this case. The above Illinois Supreme Court case discloses the fact that the Lake Shore and Michigan Southern Railroad Company at one time recognized the value of Mr. Richards' invention and employed the same for an agreed length of time, to the exclusion of the old systems and devices in the weighing and transferring of grain, and

continued such use until evidently some patent lawyer discovered that Mr. Richards' patent did not represent patentable novelty and was a mere aggregation. The above railroad company were to pay as compensation and royalty for the invention in question one-half of the net savings to them by reason of such inventions over the old system and nothing more. No more conclusive testimony can be given of the patentability and value of Mr. Richards' inventions as judicially recognized in the above case, than by a quotation from the case itself.

The undisputed facts of the old devices and systems of weighing and transferring grain being recognized and stated in the decision, and the advantages of the inventions of Mr. Richards' patent in suit over the same, being also stated.

The decision is of great length and upon these questions states as follows:

"At that time the transfer of such grain was accom-
"plished by placing the loaded and empty cars side by
"side on parallel tracks, and by shoveling the grain from
"one car to the other by hand. The weighing was done
"on track scales, by first weighing the loaded car and
"then weighing it after it was unloaded, the difference
"between such weights being the weight of the grain.
"This process was expensive, and the weights thus ob-
"tained, as the evidence tends to show, were, owing to a
"variety of causes, liable to be inaccurate. Richards,
"the plaintiff, was the inventor and patentee of a new
"process for weighing and transferring grain in bulk,
"which was claimed to be cheaper than the old
"method, and which furnished more accurate
"weights than could be had by the existing mode of
"weighing. By this process the loaded cars of grain

"were run on to an elevated track in a trans-
"fer house, and empty cars were placed alongside of
" them on a lower track. The grain was then shoveled
" by steam shovels from the loaded cars into hoppers,
" where it was weighed, and then allowed to run, by
" force of gravity, into the empty cars below. Negotia-
" tions were thereupon entered into between Richards and
" the defendant company, with a view to the adoption by
" the latter of this new mode of weighing and transferring
" grain, and these negotiations resulted in a written con-
" tract between the company of the first part, and Rich-
" ards, of the second part, bearing date January 2, 1884,
" which contract was afterwards assigned by Richards to
" the firm of Richards, Maynard & Co., consisting of
" Richards and John W. Maynard. Said contract re-
" cited, by way of preamble, that one of its objects was
" to provide a cheaper method of transfering grain, mill-
" feed and seed from one car to another than the
" one employed by said company, and for that pur-
" pose to use the device of Richards secured to him by
" letters patent, etc., and that Richards intended to erect
" and build a grain transfer house on the land thereinafter
" described, for the purpose of so handling, weighing and
" transferring in bulk such grain, mill-feed and seed as
" might be delivered to him for that purpose by the com-
" pany. The company then agreed, in consideration of
" the nominal rental of $10 per year, and of the covenants
" in the contract to be kept and performed by Richards,
" to lease to him for the term of ten years, certain land
" upon which to erect such transfer house and the neces-
" sary approaches thereto, and also agreed that, as soon as
" such transfer house and approaches were constructed, it
" would build and maintain thereon, and through such

"transfer house, such track or tracks as might be necessary "to transact the business contemplated by said agreement, "and do all switching of loaded and empty cars to and "from said transfer house at its own expense and without "cost to Richards, provided that the actual cost thereof "should be taken into account in determining the fair "amount to be paid Richards, as provided in the follow- "ing covenants:

"'Third: Said first party further covenants and agrees "that in case there shall be any saving to it, in switch- "ing, weighing and transferring of products in this "agreement referred to, through the methods and "devices adopted by said second party, over and above "the actual cost of doing the same work under the ways "and methods now in use by said first party, then and in "that event it will pay to second party one-half of said "saving, the just and actual amount thereof to be ascer- "tained and determined as provided in covenant 'First' "'of Mutual Covenants,' said amounts, if found due, to "be paid to said second party on or before the middle "of each month for the month preceding."

It also appears further by this decision that a verdict of $75,000 was rendered in favor of Richards as savings by reason of his invention under the above quoted third clause, and that a previous judgment had been obtained by him against the same company for the use of his inventions for the sum of $9,000, reported in the 126 Illinois Reports, 448. Such case also discloses the enormous profit and advantage accruing by reason of the employment of the inventions of Mr. Richards' patent over the most successful and best known devices employed for that purpose.

It would seem, indeed, that an invention recognized by

one of the most powerful railroad corporations of the country, notoriously able and willing to contest every claim made upon it, from the Federal government down to the day laborer, whose only cow they kill upon their track, and for which recognition they contribute by judicial finding more than $80,000, proves conclusively that an invention and a patent thus recognized and paid for cannot be void on its face and so determined by the simple reading thereof.

There is another fact and condition also of which this court can, as we understand it, and will if they so can, take judicial notice, which bears strongly upon the question of the validity of this Richards patent in suit.

The legislature of the State of Illinois has recognized the great value and utility of this invention of Richards, and upon the 25th day of May, 1887, passed an act which has been the law of the State of Illinois ever since, compelling parties to employ the inventions and devices of Richards in the weighing and transferring of grain carried by them. This law, while it does not mention in terms the Richards patent, just as clearly identifies that patent and its devices as if the same was specified by title, number and date.

It is a well known fact of which the published legislative proceedings of the State of Illinois, in connection with the passage of such act, clearly sets forth, that such act was passed at the instigation and demands of a great body of citizens petitioning the legislature so to do, and in such petition specifying the patented inventions and the patent itself of Mr. Richards in suit. Such law is found in Hurd's Revised Statutes of Illinois, of 1893, p. 1142, and for more convenient reference, we here cite the act itself as follows:

"An act relating to the receipt, shipment, transportation "and weighing of grain in bulk by railroad com- "panies.

"SECTION 1. Be it enacted by the People of the "State of Illinois, represented in the General Assembly: "That in all counties of the third class, and in all cities "having not less than 50,000 inhabitants, where bulk "grain, millstuffs or seeds are delivered by any railroad "transporting the same from initial points to another "road for transportation to other points, such road or "roads receiving the same for transportation to said "points or other connections leading thereto, shall pro- "vide suitable appliances for unloading, weighing and "transferring such property from one car to another "without mixing or in any way changing the identity "of the property so transferred, and such property shall "be accurately weighed in suitably covered hopper "scales, which will determing the actual net weight of "the entire contents of any car-load of grain, millstuffs "or seeds at a single draft, without gross or tare, and "which weights shall always be given in the receipts or "bills of lading and used as the basis of any freight "contracts affecting such shipments between such rail- "road companies and the owners, agents or shippers of "such grain, millstuffs or seeds so transported and trans- "ferred."

The act further provides that the different railroad companies can be compelled to comply with its provisions by a mandamus and fixes a penalty for refusing so to do, in each instance of "not less than $100, nor more than "$500." We again respectfully submit that this recognition of the great value and utility of Richard's inventions as exhibited by his patent in suit, by this legislative

enactment of the State of Illinois is such high tribute and recognition of such patent as forbids any contention of "its invalidity upon its face."

The third ground of defendant appellees demurrer is as follows:

"*Third. That both of the claims of the said patent "are wholly void as being for aggregations merely, and "not for patentable combinations.*"

We know of no case where any patent has ever been declared invalid or void upon its face by reason of any such asserted condition as represented by this third ground of demurrer. Many patents have been declared invalid as being for aggregations, where upon full proof taken, such condition appeared clearly to be the fact, but for any court to state antecedently that a combination of any claim of a patent was a mere aggregation of parts, and the patent therefore invalid, has not to our knowledge as yet happened.

No opinion was rendered by Judge Blodgett, and it is, of course, impossible to determine whether this third clause of demurrer had any weight with him; but whether it had or not is perfectly apparent on the face of the patent, that both claims represent a co-acting combination and not a mere aggregation of mechanical parts in hap-hazard juxtaposition without co-acting relation one with the other. This subject of aggregation and combination has recently been fully discussed in this court and the controlling authorities cited, in the case of *Palmer* v. *Corning*, 70 O. G., 1497; and we are entirely confident that even without proof of any description as to the connection and relevancy of the operative parts forming the combination of Richards claims, the one with the other, his patent is safe from any suggestive application of de-

fendant appellees' third ground of demurrer, under the last case of this court upon this subject *supra*.

It should be remembered, however, that the different elements going to make up the combination of a claim need not act simultaneously, but it is equally sufficient for them to act successively to produce a new and beneficial result. This proposition is well stated in the case of *Forbush* v. *Cook*, 2 Fish., 669, the court, CURTIS, J., there said:

"To make a valid claim for a combination, it is not "necessary that the several elementary parts of the com- "bination should act simultaneously. If those elementary "parts are so arranged that the successive action of each "contributes to produce some one practical result, which "result when attained is the product of the simultaneous "or successive action of all the elementary parts, viewed "as one entire whole, a valid claim for thus combining "those elementary parts may be made."

It is not contended that any one of the individual elements of the two relied upon claims of the Richards patent are new *per se* or are in themselves Mr. Richards' inventions. No rule of law however, is more firmly established in this court, than the proposition that the patent asserted cannot be defeated, upon the ground that the individual elements going to make up the combination are found separately in prior patents, printed publications, or machines.

Hailes v. *Van Wormer*, 20 Wall., 353.
Imhaueser v. *Buerk*, 101 U. S., 647.

The cases are nebulous to the effect that a new union of old elements is a new combination.

Rob. on Pats., Vol. 1, 223, and a full page of cases there cited.

CONCLUSION.

In conclusion, your honors, we most earnestly, hopefully and confidently contend and submit, that the defendant appellees have and must fail in their assertions of demurrer here presented for the reason alone that Richards' Letters Patent in question are good and valid upon their face under the presumption of law applicable thereto, and that upon their face, they in no wise, exhibit any suggestion of the absence of patentable novelty, nor as representing merely a juxtaposition of parts, characterizing a mere aggregation; and we confidently submit further that the record facts called to the attention of this honorable court and coming fully within the "judicial notice of this court," supplement, intensify and make certain the presumed novelty, and patentability of the combinations disclosed by Mr. Richards' Patent, and for these reasons, the decree of dismissal of complainant's bill of complaint below should be reversed, and this cause remanded.

Respectfully submitted.

C. K. OFFIELD.

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Office Supreme Court, U.S.
FILED
APR 20 1895
JAMES H. McKENNEY,

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1894.

Edward S. Richards,
Appellant,
vs.
The Chicago and Grand Trunk Railroad Company, The Board of Trade of Chicago, and John Walker,
Appellees.

DEMURRER.
EQUITY. NO. 312.

Appeal from Circuit Court of the United States for the Northern District of Illinois.

BRIEF AND ARGUMENT FOR COMPLAINANT APPELLANT

BY

C. K. OFFIELD.

THE GUNTHORP-WARREN PRINTING COMPANY, 89 DEARBORN ST., CHICAGO.

IN THE

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Appeal from Circuit Court of the United States for the Northern District of Illinois.

BRIEF AND ARGUMENT FOR COMPLAINANT APPELLANT

BY C. K. OFFIELD.

GENERAL STATEMENT OF CASE AS TO PARTIES AND SUBJECT-MATTER.

MAY IT PLEASE THE COURT:

Upon the 23d day of January, A. D. 1889, the complainant appellant, Mr. Edward S. Richards, filed his Bill of Complaint against the above named defendant appellees, The Chicago and Grand Trunk Railroad Company, The Board of Trade of Chicago and John Walker, alleging an in fringement of his letters patent, bearing date of November 16, 1884, and numbered 308,095, for a new and useful improvement in grain transferring apparatus.

The inventor and complainant appellant is a citizen of Illinois, resident of Chicago, and the principal defendant appellees are great and powerful corporate organizations known and identified by the mere mention of their names respectively.

The Bill of Complaint is substantially in the usual form in patent causes, having a copy of the patent sued upon attached thereto as an exhibit part thereof; charging a joint infringement, praying an accounting and injunction, etc. (Rec., 1, 2, 3, 4.)

Subpœnas were duly issued and served upon all the defendant appellees. (Rec., 8.) Upon March 4, 1889, the appearances of all defendant appellees were entered by their respective counsel. (Rec., 9.) Afterwards upon the 28th day of March, A. D. 1889, the defendant appellees through their counsel respectively, Mr. George Payson in behalf of The Chicago and Grand Trunk Railroad Company, and Mr. Sidney Smith in behalf of the Board of Trade of Chicago and John Walker, filed their joint and several demurrer in the above cause; the gravamen of which is contained in three special clauses as follows:

"*First.* That the complainant's said Bill of Complaint, "in case the same were true, which these defendants in "nowise admit, contains not any matter of equity whereon "this court can ground any decree or give the complain- "ant any relief or assistance as against these defendants "or any or either of them.

"*Second.* That the said letters patent granted to said "Edward S. Richards, November 18, 1884, are wholly "void on their face for want of patentable novelty and "invention.

"*Third.* That both of the claims in the said patent "are wholly void as being for aggregations merely and "not for patentable combinations." (Rec., 9, 10).

This demurrer came on for hearing and argument before his Honor, Judge Henry W. Blodgett, upon the 8th day of July, 1889, and was, after a careful and patient hearing, taken under advisement. (Rec., 10.) And upon July 15, 1889, said demurrer was overruled and on motion of the said George Payson, Esq.: "The "time for defendants to answer is extended to the 15th "day of September next, if they so elect."

Upon September 2, 1889, the said defendant railroad company by Mr. Payson, its solicitor, presented a petition of said defendant railroad company for a rehearing. (Rec., 11.) And upon the 7th day of October, 1889, said petition for rehearing was submitted upon briefs and taken under advisement. (Rec., 12.) Upon October 21, 1889, his Honor, Judge Blodgett ordered the order of July 15, 1889, overruling said demurrer, set aside, and thereupon, sustained the demurrer, and ordered that: "The bill be dismissed for want of equity at complain- "ant's costs." (Rec., 12.)

Complainant appellant immediately upon the entry of the last above order, prayed an appeal to the Supreme Court of the United States, which was immediately allowed and bond filed. (Rec., 12.) Citation being duly issued and accepted for the railroad company defendant, September 9, 1891. (Rec., 14.)

Assignment of errors was duly lodged in this court upon the 6th day of October, 1891, containing the following specific charges of error:

"*First.* That the Circuit Court erred in sustaining "the demurrer of said defendants and dismissing the com- "plainant's bill for want of equity at complainant's "costs.

"*Second.* The Circuit Court erred in rendering "decree and judgment against said complainant.

"*Third.* The Circuit Court erred in rendering decree "and judgment against said complainant and in not ren- "dering decree and judgment against said defendants.

"*Fourth.* That the Circuit Court erred in granting "defendants' petition for rehearing of the demurrer of "said defendants.

"*Fifth.* That the Circuit Court erred in setting aside "the order entered herein July 15, 1889, overruling the "demurrer of said defendants.

"*Sixth.* That the said decree, judgment and proceed- "ings were otherwise manifestly irregular, uncertain, in- "formal and contrary to law." (Rec., 14.)

We take it that whatever possible merit there can be in defendant appellees' demurrer, is contained and represented entirely by the second and third clauses assigned, namely:

"*Second. That the said letters patent granted to "said Edward S. Richards, November 18, 1884, are "wholly void on their face for want of patentable novelty "and invention.*

"*Third. That both of the claims in the said patent "are wholly void as being for aggregations merely, and "not for patentable combinations.*" (Rec., 9, 10.)

We will now take up said second and third clauses in the order above named, and present and analyze the same to your Honors with an entire confidence and belief that we can thus unqualifiedly convince this court of the unsoundness and injustice of each of these clauses of demurrer, and their utter futility to compass the death of the Richards patent in suit, under the law and the facts applicable thereto.

This Richards patent as to its drawings, specifications and claims, to anyone skilled in the industry to which it relates, is without difficulty to understand. It has for its sole object and purpose the radical advancement and improvement in the carrying out of one of the greatest industries of the world's commerce.

Mr. Richards, without circumlocution, elaboration or prolixity, clearly states in his patent, his invention, gist and substance. He first states in the preamble of his patent, that he has "invented certain new and useful Im- "provements in Grain Transferring Apparatus." Immediately thereafter, in his patent, he states in detail the purpose and object of his invention and patent as follows:

"The purpose of my invention is to provide improved "means for transferring and weighing grain without "mixing different lots or loads with each other, thus pre- "serving the identity of each lot, while it is being trans- "ferred from one car to another."

Further along in his specifications, after discussing his mechanical devices for carrying out his invention, the patentee confirms his opening statement of invention, when he says: "The operation so far as now described is com- "plete, and the grain has been weighed and transferred, "so as not to be mixed with other grain or lots of grain."

The statement of Mr. Richards' invention briefly analyzed resolves itself into two parts: (1) Improved means in weighing grain. (2) So weighing the grain by such improved means as not to mix one lot with another while transferring such grain from one car to another.

The art of weighing and transferring grain before the Richards invention and patent, was well defined and of long practice, old and well known. It consisted in run-

ning a carload of grain upon track scales, *i. e.*, scales forming part of the track, weighing the car and the grain as a unit, then shoveling the grain into another car or into an elevator, and then weighing the empty car to determine the net weight of the removed grain. This system and procedure had marked defects and disadvantages. Snow and ice, dirt and mud, rain and sun, irrespective of any other facts and conditions, caused a substantial variance between the supposed and the actual weight of the grain when first placed in the car, and its reported weight when removed or transferred from the car at the end of its journey. The loaded cars were usually weighed without uncoupling upon the track scales, thus introducing another uncertain element as against the true weight of the grain.

Again, it was the common and universal custom before the Richards invention of the patent in suit, when by reason of the slowness of the process of the transferring of the grain from one car to another by track weighing, and hand manipulation, to house or store the grain for indefinite periods of time in grain elevators or buildings of large capacity. Theoretically, such elevator buildings were divided into compartments for the purpose of separating the grain received into classes or lots, according to the grade or quality of the grain, so received, but practically such separation was a matter of much difficulty, depending solely upon individual judgment and volition, supplemented thereto oft-times with carelessness and dishonesty, in the practical carrying out of the system, so that with great frequency in practical application, the second and third grades of grain went into the first grade compartment and *vice versa*. The result and practice of these conditions and systems in Chicago alone, became a

national, if not, world wide scandal, and in the year 1884 and 1885 seriously threatened the grain trade of Chicago itself and actually diverted for a time, the weighing and transferring of the grain of the north-west from the City of Chicago to the City of Milwaukee as to some of the principal common carriers having their terminus in the City of Chicago.

Owners and shippers of grain of all kinds openly claimed that by the old system they were defrauded and cheated, in the first instance in the track weighing process and shoveling from car to car, and in the second instance by the commingling of the first grade grain with the second and third grade qualities, and that such system of weighing, transferring and storing grain was vicious and unfair, even if conducted honestly, with good judgment and with every intention of accuracy and fairness of result.

It was the necessity for a remedy for these evils and defects that gave rise to and produced the invention of the Richards patent in suit. There is not the slightest doubt that the invention of Richards, as evidenced by his patent as here present, was and is a solution of the entire problem, and want, and is so recognized by the shipper, carrier and consumer of grain. By the Richards mechanical combinations as shown by his patent, co-acting one with another, the grain contained in one car is transferred to another selected car, either upon the same or an opposite track by a single continuous operation, the grain itself being weighed *in transitu*, and preserving the identity of each lot of grain without any possibility of commingling one lot with another in the operation.

It will be seen at once, also, that these weighing and transferring grain devices of Richards' patent do away

entirely with the grain elevator buildings of this country, such buildings costing at a minimum about $100,000, and the maximum about $2,000,000, with all the attending expenses of insurance, operating expenses and repairs, aside from the interest on capital invested, etc., etc.

Moreover, many railroad companies will not allow either their passenger or freight cars to be run off their own tracks, thus necessitating a mechanical transfer, so far as grain products are concerned, at the terminus of every different railroad, or several grain transfers on through shipments of grain to distant points. Such transfer can be made by the Richards inventions and devices at the rate of four cars of grain in eight minutes at a minimum cost per car.

More specifically stated, the Richards invention as shown by his patent operates as follows:

The loaded car of grain is run upon the track, and the empty car to receive such grain upon the same or opposite track. The door of the grain car is then opened opposite the receiving chute for the grain, and the grain then descends by gravity into the chute or is automatically shoveled into such chute by a steam shovel as suggested in Richards' patent, when necessary; the grain dsscends in the chute to the bottom of the elevator leg, where it is taken by the traveling buckets and carried to the elevated hopper upon and constructed as a part of the elevated hopper scales, where it is there weighed automatically or otherwise, and upon the releasing of the valve registering the desired weight, the grain descends through the spout into the receiving car, thus completing the entire operation of the weighing and transferring of grain in the most simple and effect manner with a result, positive, certain and without the slightest opportunity

for mistake or criticism as to the means employed or the result obtained.

Mr. Richards in his patent somewhat more fully describes the operation of his devices represented by his two claims, with special reference to letter identifications of the parts employed and for a more convenient reference, we herewith quote from his specifications such descriptive matter of such operation:

"I transfer and weigh the grain in the following manner: The car to be unloaded—for example, the car "B—is drawn upon the track F and allowed to stand in "such a position that the door will be directly opposite "the chute J. If the grain is to be transferred to a car "opposite or about opposite the car B—for example, to "the car D—I close the door or valve L, and open the "valve K. The grain is then shoveled from the car by "means of a steam shovel, or otherewise, into the chute "J, from which it passes into the elevator leg through "which the buckets move upward. The grain is thus "elevated and discharged into the hopper of the hopper-"scales located for discharging its contents into the car "D. That hopper has its valve closed while being filled, "and when full the grain therein is weighed and dis-"charged into the car intended to receive it.

"The operation, so far as now described, is complete, "and the grain has been weighed and transferred so as "not to be mixed with other grain or lots of grain. It "may sometimes happen, however, that it may be either "necessary or desirable to transfer the grain from one "car to another not opposite the car to be unloaded; in "other words, I may wish to transfer the grain from the "car B to the car E when the said cars are arranged with "relation to each other as represented in Fig. 3. In such

"case I close the door or valve K and open the door or "valve L and set the conveyer in operation. I also open "one of the slides or valves O in the conveyer-way, the "valve so opened permitting the conveyer-way to com- "municate with the boot forming a part of the elevating "apparatus for elevating the grain into the hopper dis- "charging into the car E. By this means the grain dis- "charged into the conveyer-way will be carried to the "open door O, pass through that door, be elevated, dis- "charged into a hopper and weighed, and then discharged "into the car E.

"The conveyer I employ only for the purpose of en- "abling me to transfer the grain to a car not opposite the "car being unloaded; but it will be perceived that some "of the principal features of my invention will be brought "into use if the elevators and hopper-scales are not du- "plicated, and that the grain may be transferred and "weighed without being mixed with other grain when "only one elevator and hopper-scale are employed. In "the latter case the conveyer is not essential, and is only "essential for the purposes described."

The claims of the Richards patent are two in number, and for more convenient reference we herewith quote the same:

"1. The combination of a fixed or stationary build- "ing, the tracks F and G, an elevator apparatus, and "elevated hopper-scales having a fixed or stationary hop- "per provided with with a valve or slide in its bottom, "and a discharge spout P, adapted and arranged for dis- "charging the grain directly from the said hopper into a "car, substantially as specified and for the purposes set "forth.

"2. The combination of a fixed or stationary build-

"ing, the tracks F and G, two or more elevating appa-
"ratus, a series of two or more elevated hopper-scales,
"having fixed or stationary hoppers, each having a valve
"or slide in its bottom, the discharge spouts P P,
"adapted and arranged for discharging the grain directly
"from the said hoppers, respectively, into a correspond-
"ingly arranged car, a horizontal conveyer, the chutes
"J J, having therein the doors or valves K and L, and
"the slides or doors O O, all arranged substantially as
"shown and described, with relation to each other and
"for the purposes set forth."

It would seem that a patent so clear and obviously useful upon its face, with mechanisms so simple and accurate in their character to produce a desired result, would bar any possibility of conclusion of the invalidity of such patent "on its face," by reason of the absence therefrom of patentable novelty. Our reasons for the above statement, aside from the fact of their self-evident character, will more fully appear in the discussion of the second sustained ground of demurrer, and we here quote defendant appellee's second ground of demurrer preliminary to a discussion of the same, which is as follows :

"*Second. That the said letters patent granted to*
"*said Edward S. Richards November 18, 1884, are*
"*wholly void on their face for want of patentable nov-*
"*elty and invention.*"

We are well aware of the fact that this court has in one or two instances said in plain terms that it is within the power of an equity court to declare a patent void upon its face for want of invention, as in the case of *Brown* v. *Piper*, 91 U. S., 37, where the court said : "Examined by the light of these considerations, we think "this patent was void on its face, and that the court

"might have stopped short at that instrument, and with-
"out looking beyond it into the answers and testimony,
"*sua sponte*, if the objection were not taken by counsel,
"well have adjudged in favor of the defendant."

And the case of *Lawson* v. *Grand Street, etc., Railroad*, 107 U. S., 649, where the Court said: "It would ill "become a court of equity to render money decree in "favor of a complainant for the infringement of a patent, "which the court could see was void on its face for want "of invention."

But we know of no case where this court has ever, as a matter of fact so found and declared independently of the record made and other questions involved.

We suppose, if a man should succeed in obtaining a patent upon hot water or a right angle triangle, such patent might be declared invalid on its face, if it was perfectly plain that the patent did, and could, mean nothing else, than these old common and well known products and devices, but no such condition is here present, and it is a somewhat suggestive fact in this connection, that the learned circuit judge, from whose circuit this appeal is taken, upon full argument made, in the first instance, overruled the demurrer here present, a result entirely antagonistic to the assertion that the Richards patent is void on its face for want of patentable novelty.

Patents are the result of a careful proceeding in the Patent Office to determine, not only the right of grant of the patent itself as representing an invention as shown by the Patent Office knowledge and records existing solely for that purpose; but also drawing hard and fast lines as to the scope and meaning of the instrument itself by requiring disclaimers and restrictions before issue from the Office

under the sanction of the seal of the government, and this court has with unvarying frequency declared the patent to be *prime facie* evidence of its validity and its claimed novelty and utility of invention.

Railroad Co. v. *Stimpson*, 14 Peters, 448.
Agawam Co. v. *Jordan*, 7 Wall., 583.
Lehnbeuter v. *Holthaus*, 105 U. S., 94.

The decisions of this court follow each other in rapid and unbroken succession from the first to the last volume of issue, to the end and effect that patents and the patent law should be construed liberally and favorably to sustain the patent.

Comr. v. *Whitely*, 4. Wall, 522.
Newell v. *Yoeman*, 94 U. S., 568.

In the case of *Providence Rubber Co.* v. *Goodyear*, 9 Wall, 788, this court said that: "A patent should be construed in a liberal spirit to sustain the just claims of the "inventor."

In the case of *Klein* v. *Russell*, 9 Wall, 466, this Court said; that the "Court should proceed in a liberal spirit, "so as to sustain the patent with the patentee's construction, if consistent with his language."

The books are full of cases at the Circuit where this doctrine of liberality in the construction of patents has been accepted and applied.

It is entirely apparent from a study of the cases of this court, that the question of patentability or invention has frequently been determined by evidence or proof in the records of the acquiescing in the patent and its adoption by persons able to defeat it and interested in its defeat, and that

the utility and admitted advantages over other devices in the old art to which it belongs, frequently determines the question of patentability.

Loom Co. v. *Higgins*, 105 U. S., 580.
Valve Co. v. *Valve Co.*, 113 U. S., 157.
McGowan v. *Packing Co.*, 141 U. S., 332.
The Barb Wire case, 143 U. S., 275.

We respectfully submit that nothing could be more unjust and unfair to any patentee than to extinguish his patent as attempted in this case solely by demurrer, where there is even a possibility that the question of invention and patentability may be determined in his favor by full testimony taken in accordance with these decisions.

We respectfully submit, also, that the three cases in this court, here presented together, are abundant proof that these several defendant appellees deemed this Richards patent and devices and inventions of sufficient importance and value to appropriate the same exactly and precisely as produced by Richards, and to cling to such inventions and devices through the vicissitudes of patent litigation, and employ expensive counsel to aid them so to do.

It is another significant fact, also, in determining the correctness of this assertion of invalidity of this Richards patent as being void on its face for want of patentable novelty, that another of the great railroad corporations of the country, namely, The Michigan Southern and Lake Shore Railroad, at one time recognized the enormous value of Mr. Richards' inventions and devices, and set aside a location adjoining their tracks in Chicago, especially for the establishment and employment of such inventions, and have been forced by judicial determination to pay under

such recognition more than one hundred thousand dollars, including interest allowed, for the use of the inventions of the patent in suit.

We believe that the Supreme Court reports of the different states and the decisions and papers of such courts when reported, are volumes of which this court will take judicial notice.

In the case of *Brown* v. *Piper*, 91 U. S., 42, this Court speaking upon this question of judicial notice, states as follows:

"The courts of the United States take judicial notice "of the ports and waters of the United States where the "tide ebbs and flows, of the boundaries of the several "states and the judicial districts, and of the laws and juris- "prudence of the several states in which they exercise "jurisdiction. Courts will take notice of whatever is "generally known within the limits of their jurisdiction; "and if the judge's memory is at fault. he may refresh "it by resorting to any means for that purpose which he "may deem safe and proper."

The case of *Lake Shore & Michigan Southern Railroad* v. *Edward S. Richards*, 152 Ill. Rep., 59, is instructive and controlling in a high decree upon the question of the novelty or validity of this Richards patent, simply upon a face reading and inspection of the same. The defendant appellee in the above case, Mr. Edward S. Richards, is complainant appellant in this case. The above Illinois Supreme Court case discloses the fact that the Lake Shore and Michigan Southern Railroad Company at one time recognized the value of Mr. Richards' invention and employed the same for an agreed length of time, to the exclusion of the old systems and devices in the weighing and transferring of grain, and

continued such use until evidently some patent lawyer discovered that Mr. Richards' patent did not represent patentable novelty and was a mere aggregation. The above railroad company were to pay as compensation and royalty for the invention in question one-half of the net savings to them by reason of such inventions over the old system and nothing more. No more conclusive testimony can be given of the patentability and value of Mr. Richards' inventions as judicially recognized in the above case, than by a quotation from the case itself.

The undisputed facts of the old devices and systems of weighing and transferring grain being recognized and stated in the decision, and the advantages of the inventions of Mr. Richards' patent in suit over the same, being also stated.

The decision is of great length and upon these questions states as follows:

"At that time the transfer of such grain was accom-
"plished by placing the loaded and empty cars side by
"side on parallel tracks, and by shoveling the grain from
"one car to the other by hand. The weighing was done
"on track scales, by first weighing the loaded car and
"then weighing it after it was unloaded, the difference
"between such weights being the weight of the grain.
"This process was expensive, and the weights thus ob-
"tained, as the evidence tends to show, were, owing to a
"variety of causes, liable to be inaccurate. Richards,
"the plaintiff, was the inventor and patentee of a new
"process for weighing and transferring grain in bulk,
"which was claimed to be cheaper than the old
"method, and which furnished more accurate
"weights than could be had by the existing mode of
"weighing. By this process the loaded cars of grain

"were run on to an elevated track in a trans-
"fer house, and empty cars were placed alongside of
"them on a lower track. The grain was then shoveled
"by steam shovels from the loaded cars into hoppers,
"where it was weighed, and then allowed to run, by
"force of gravity, into the empty cars below. Negotia-
"tions were thereupon entered into between Richards and
"the defendant company, with a view to the adoption by
"the latter of this new mode of weighing and transferring
"grain, and these negotiations resulted in a written con-
"tract between the company of the first part, and Rich-
"ards, of the second part, bearing date January 2, 1884,
"which contract was afterwards assigned by Richards to
"the firm of Richards, Maynard & Co., consisting of
"Richards and John W. Maynard. Said contract re-
"cited, by way of preamble, that one of its objects was
"to provide a cheaper method of transfering grain, mill-
"feed and seed from one car to another than the
"one employed by said company, and for that pur-
"pose to use the device of Richards secured to him by
"letters patent, etc., and that Richards intended to erect
"and build a grain transfer house on the land thereinafter
"described, for the purpose of so handling, weighing and
"transferring in bulk such grain, mill-feed and seed as
"might be delivered to him for that purpose by the com-
"pany. The company then agreed, in consideration of
"the nominal rental of $10 per year, and of the covenants
"in the contract to be kept and performed by Richards,
"to lease to him for the term of ten years, certain land
"upon which to erect such transfer house and the neces-
"sary approaches thereto, and also agreed that, as soon as
"such transfer house and approaches were constructed, it
"would build and maintain thereon, and through such

"transfer house, such track or tracks as might be necessary "to transact the business contemplated by said agreement, "and do all switching of loaded and empty cars to and "from said transfer house at its own expense and without "cost to Richards, provided that the actual cost thereof "should be taken into account in determining the fair "amount to be paid Richards, as provided in the follow- "ing covenants:

"'Third: Said first party further covenants and agrees "that in case there shall be any saving to it, in switch- "ing, weighing and transferring of products in this "agreement referred to, through the methods and "devices adopted by said second party, over and above "the actual cost of doing the same work under the ways "and methods now in use by said first party, then and in "that event it will pay to second party one-half of said "saving, the just and actual amount thereof to be ascer- "tained and determined as provided in covenant 'First' "'of Mutual Covenants,' said amounts, if found due, to "be paid to said second party on or before the middle "of each month for the month preceding."

It also appears further by this decision that a verdict of $75,000 was rendered in favor of Richards as savings by reason of his invention under the above quoted third clause, and that a previous judgment had been obtained by him against the same company for the use of his inventions for the sum of $9,000, reported in the 126 Illinois Reports, 448. Such case also discloses the enormous profit and advantage accruing by reason of the employment of the inventions of Mr. Richards' patent over the most successful and best known devices employed for that purpose.

It would seem, indeed, that an invention recognized by

one of the most powerful railroad corporations of the country, notoriously able and willing to contest every claim made upon it, from the Federal government down to the day laborer, whose only cow they kill upon their track, and for which recognition they contribute by judicial finding more than $80,000, proves conclusively that an invention and a patent thus recognized and paid for cannot be void on its face and so determined by the simple reading thereof.

There is another fact and condition also of which this court can, as we understand it, and will if they so can, take judicial notice, which bears strongly upon the question of the validity of this Richards patent in suit.

The legislature of the State of Illinois has recognized the great value and utility of this invention of Richards, and upon the 25th day of May, 1887, passed an act which has been the law of the State of Illinois ever since, compelling parties to employ the inventions and devices of Richards in the weighing and transferring of grain carried by them. This law, while it does not mention in terms the Richards patent, just as clearly identifies that patent and its devices as if the same was specified by title, number and date.

It is a well known fact of which the published legislative proceedings of the State of Illinois, in connection with the passage of such act, clearly sets forth, that such act was passed at the instigation and demands of a great body of citizens petitioning the legislature so to do, and in such petition specifying the patented inventions and the patent itself of Mr. Richards in suit. Such law is found in Hurd's Revised Statutes of Illinois, of 1893, p. 1142, and for more convenient reference, we here cite the act itself as follows :

"An act relating to the receipt, shipment, transportation
"and weighing of grain in bulk by railroad com-
"panies.

"SECTION 1. Be it enacted by the People of the "State of Illinois, represented in the General Assembly: "That in all counties of the third class, and in all cities "having not less than 50,000 inhabitants, where bulk "grain, millstuffs or seeds are delivered by any railroad "transporting the same from initial points to another "road for transportation to other points, such road or "roads receiving the same for transportation to said "points or other connections leading thereto, shall pro-"vide suitable appliances for unloading, weighing and "transferring such property from one car to another "without mixing or in any way changing the identity "of the property so transferred, and such property shall "be accurately weighed in suitably covered hopper "scales, which will determing the actual net weight of "the entire contents of any car-load of grain, millstuffs "or seeds at a single draft, without gross or tare, and "which weights shall always be given in the receipts or "bills of lading and used as the basis of any freight "contracts affecting such shipments between such rail-"road companies and the owners, agents or shippers of "such grain, millstuffs or seeds so transported and trans-"ferred."

The act further provides that the different railroad companies can be compelled to comply with its provisions by a mandamus and fixes a penalty for refusing so to do, in each instance of "not less than $100, nor more than "$500." We again respectfully submit that this recognition of the great value and utility of Richard's inventions as exhibited by his patent in suit, by this legislative

enactment of the State of Illinois is such high tribute and recognition of such patent as forbids any contention of "its invalidity upon its face."

The third ground of defendant appellees demurrer is as follows:

"*Third. That both of the claims of the said patent "are wholly void as being for aggregations merely, and "not for patentable combinations.*"

We know of no case where any patent has ever been declared invalid or void upon its face by reason of any such asserted condition as represented by this third ground of demurrer. Many patents have been declared invalid as being for aggregations, where upon full proof taken, such condition appeared clearly to be the fact, but for any court to state antecedently that a combination of any claim of a patent was a mere aggregation of parts, and the patent therefore invalid, has not to our knowledge as yet happened.

No opinion was rendered by Judge Blodgett, and it is, of course, impossible to determine whether this third clause of demurrer had any weight with him; but whether it had or not is perfectly apparent on the face of the patent, that both claims represent a co-acting combination and not a mere aggregation of mechanical parts in hap-hazard juxtaposition without co-acting relation one with the other. This subject of aggregation and combination has recently been fully discussed in this court and the controlling authorities cited, in the case of *Palmer* v. *Corning*, 70 O. G., 1497; and we are entirely confident that even without proof of any description as to the connection and relevancy of the operative parts forming the combination of Richards claims, the one with the other, his patent is safe from any suggestive application of de-

fendant appellees' third ground of demurrer, under the last case of this court upon this subject *supra*.

It should be remembered, however, that the different elements going to make up the combination of a claim need not act simultaneously, but it is equally sufficient for them to act successively to produce a new and beneficial result. This proposition is well stated in the case of *Forbush* v. *Cook*, 2 Fish., 669, the court, CURTIS, J., there said:

"To make a valid claim for a combination, it is not "necessary that the several elementary parts of the com- "bination should act simultaneously. If those elementary "parts are so arranged that the successive action of each "contributes to produce some one practical result, which "result when attained is the product of the simultaneous "or successive action of all the elementary parts, viewed "as one entire whole, a valid claim for thus combining "those elementary parts may be made."

It is not contended that any one of the individual elements of the two relied upon claims of the Richards patent are new *per se* or are in themselves Mr. Richards' inventions. No rule of law however, is more firmly established in this court, than the proposition that the patent asserted cannot be defeated, upon the ground that the individual elements going to make up the combination are found separately in prior patents, printed publications, or machines.

Hailes v. *Van Wormer*, 20 Wall., 353.
Imhaueser v. *Buerk*, 101 U. S., 647.

The cases are nebulous to the effect that a new union of old elements is a new combination.

Rob. on Pats., Vol. 1, 223, and a full page of cases there cited.

CONCLUSION.

In conclusion, your honors, we most earnestly, hopefully and confidently contend and submit, that the defendant appellees have and must fail in their assertions of demurrer here presented for the reason alone that Richards' Letters Patent in question are good and valid upon their face under the presumption of law applicable thereto, and that upon their face, they in no wise, exhibit any suggestion of the absence of patentable novelty, nor as representing merely a juxtaposition of parts, characterizing a mere aggregation; and we confidently submit further that the record facts called to the attention of this honorable court and coming fully within the "judicial notice of this court," supplement, intensify and make certain the presumed novelty, and patentability of the combinations disclosed by Mr. Richards' Patent, and for these reasons, the decree of dismissal of complainant's bill of complaint below should be reversed, and this cause remanded.

Respectfully submitted.

C. K. OFFIELD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, A. D. 1894.

No. 310.

EDWARD S. RICHARDS,
Appellant,

vs.

THE CHASE ELEVATOR COMPANY AND HENRY J. CHASE, PRESIDENT,
Appellees.

BRIEF FOR APPELLEES.

I.

HISTORY OF THE CASE.

This is a bill to restrain the supposed infringement of an alleged patent right granted to E. S. Richards for a grain transferring apparatus.

The bill declares, as is customary in such cases, "that a "true copy of the said letters patent, together with the specifi- "cations, drawings and claims annexed to said letters patent, "is annexed to this bill of complaint and marked Exhibit A, "and hereby incorporated in and made part of this bill of com- "plaint as fully as though herein specifically and at large set "forth." (Rec., 2 and 5 to 7.)

The defendants (appellees) demurred on the ground that the patent on its face disclosed that it was void and of no effect in law, and could not support a decree for the relief asked.

The court below—Judge Blodgett—sustained the demurrer and dismissed the bill for want of equity. (Rec., 10.) The opinion of the court below in this matter will be found in 40 Fed. Reporter, at page 165, under the title *Richards* v. *Michigan Cent. R. Co. et al.* (three cases).

The complainant then appealed.

II.

THE PATENT IS VOID ON ITS FACE.

Without necessity for external proof of any sort, the patent shows upon its face that the subject-matter which it attempts to claim is not a patentable one. Reference to the specification discloses that the claims are *for an alleged combination of a grain elevator with two railroads, the elevator being placed between the railroads.* The railroads are the ordinary ones, and the elevator is the ordinary elevator, each element being an old and well-known device, as any one can determine by looking at the patent. There is no statement in the specification that any one of the devices or elements of the alleged combination is a new element or invented by the patentee, and as the combination only is claimed, a presumption of law is created that each of the elements themselves, and every sub-combination of them less than the whole is old and public property.

Gould v. *Rees*, 15 Wall., 191.
Brown v. *Shelby*, 23 Wall., 224.

The claims of the patent are in the following language:

1. "The combination of a fixed or stationary building, the

" tracks F and G, an elevator apparatus, and elevated hopper-
" scales having a fixed or stationary hopper provided with a
" valve or slide in its bottom, and a discharge spout, P,
" adapted and arranged for discharging the grain directly from
" the said hopper into a car, substantially as specified and for
" the purposes set forth."

2. " The combination of a fixed or stationary building,
" the tracks F and G, two or more elevating apparatus, a
" series of two or more elevated hopper scales, having fixed or
" stationary hoppers, each having a valve or slide in its bot-
" tom, the discharge-spouts P P, adapted and arranged for
" discharging the grain directly from the said hoppers, re-
" spectively, into a correspondingly-arranged car, a horizontal
" conveyor, the chutes J J having therein the doors or valves
" K and L, and the slides or doors O O all arranged substan-
" tially as shown and described with relation to each other and
" for the purposes set forth."

Analysis of these claims shows them to be for an alleged combination of the following parts or elements:

1. A " fixed or stationary building."

2. Two railway tracks passing into the building or on opposite sides thereof.

3. Elevating appliances for elevating grain.

4. A hopper scale

5. A discharge spout to discharge the grain into the car.

6. And *sometimes* a conveyor for carrying the grain along horizontally when the car to be loaded is not exactly opposite the car being unloaded.

These claims refer back to the drawing and the descriptive part of the instrument for better understanding by use of the expressions " substantially as specified and for the purposes

"set forth" and "substantially as shown and described and "for the purposes set forth."

Examining the description and drawings with regard to each of these "elements" we discover:

1. As to the "*fixed or stationary building.*"

This is not particularly described beyond the statement that it is "fixed" or "stationary" and that it is "for inclosing and "supporting the apparatus." The drawing indicates that it is a common wooden frame house which rests on the ground. There does not seem to be anything novel in the method of making it "stationary" or "fixed." Nor is it even stated that in respect to being "fixed" or "stationary"; *i. e.*, resting on the ground, this "building" differs in any respect from other buildings. Indeed it is never customary to have buildings float about in the air, and hence we may justly conclude that the terms "fixed" and "stationary" do not imply any novelty. And also as to the expressed purpose of "inclosing and "supporting the apparatus"; this is the usual purpose of every building, namely, to enclose what it contains, and to support what it encloses. There is nothing whatever therefore of a novel or peculiar nature in this element. It is just an elevator building.

It is true that the emphatic repetition of the synonymous expressions "fixed or stationary" as a limitation upon the elevator "building" serve to distinguish the claims from floating transfer elevators for transporting grain from canal boats to ships in harbor; or from such elevator and weighing apparatus mounted on a movable car for making transfers from car to car in railroad switch yards; but it is not seen how such a distinction can amount to a patentable difference or invention. A claim for a water bucket "painted "purple" would be distinguished perhaps in terms from other water buckets; but the difference would not be patentable.

2. As to the railway tracks. The description given of this element is as follows: "B C D and E represent grain cars on "tracks F and G respectively which enter the building." (Rec., 5.) The drawing indicates these tracks by parallel lines and shows a track on each side of the building. They appear to be just ordinary railroads running up close beside the elevator apparatus as railroads usually do to bring the cars near enough to load and unload.

3. As to the elevating apparatus. There is no suggestion of anything peculiar about this; it is described in a list fashion by letters of reference, thus: "I, I, are elevator buckets "arranged and operating for elevating grain from a boot I^1, "into one of the hoppers, there being a series of buckets for "each hopper." And "J is a chute entering one of the legs "through which the elevator buckets move, and K is a door "or valve for shutting off the chute J from communication "with the said leg." There is nothing in this which might lead any one to suppose that the apparatus is anything more or less than the common elevator with its string of buckets, and the inference is clear that nothing else is meant.

4. As to the hopper scale. The description assumes, in this as in the other cases, that every one already knows what a hopper scale is, as the text simply says: "H H are fixed "or stationary and elevated hopper scales located in the "upper part of the building." Of course they are fixed and stationary if they are in the building. They are just common hopper scales.

5. As to the discharge spout. That is just lettered P and is said to be "provided in the usual manner with a slide or "valve." It is just the common every day discharge spout, which we must assume every elevator apparatus has, and is furnished with the usual slide for closing and opening it.

6. As to the conveyor. This is nothing but a common conveyor, and is described as such thus: "M is a conveyor "way or box, and N is a conveyor moving horizontally therein." This description assumes that every one will know what is meant without details. He says, in effect, he sometimes employs this conveyor to carry the grain along when the cars are not opposite each other.

From the very terms and manner, indeed, of the description it is therefore apparent that the patentee did not consider he was the inventor of any one of these so-called elements which are thus brought together in the claims; and this is also apparent from the fact that he lays no claim to be the inventor of any one of them, and is still further apparent because the things are each old to the knowledge of every one.

For convenience we have above considered each of the parts, or so-called elements of the claims, separately and individually. But really a true view of the nature of the claims is not thus to be obtained, for grouping together the fixed or stationary building and its contents, the elevator legs, elevator buckets, the hopper scale, the discharge spout and the conveyor, we have nothing more or less than an ordinary "grain elevator," as everybody knows, just such a building and contents as is found by the side of every railroad in the country. The claims simply amount to an attempt by use of many words to cover the placing of a grain elevator between two railroad tracks. It may be a matter of convenience to have a street, a road, a railroad, or a canal, on two sides of a warehouse or a grain elevator; or to have a canal on one side and a railroad on the other, for loading and unloading grain or other merchandise from one railroad car into another, from a boat into a railroad car, from a wagon into a boat or a car, or from a boat into a wagon or another boat; but we cannot believe that such an arrangement involves any patentable invention or

patentable novelty. And, moreover, we cannot understand how it can be made out that the placing of a grain elevator and its ordinary contents between two railroad tracks amounts to such a *combination* as may be the proper subject of a patent claim. The learned judge below in his opinion says:

"Now, it is evident that none of the parts or elements of "this combination perform any different function in the com- "bination than they respectively did when operating separ- "ately; and it is equally clear that the result of the operation "of these elements as combined is the same, and no more, "than the sum of the results of these elements when operat- "ing separately. The railroad tracks bring the cars to the "building; the building supports the elevating apparatus; the "elevating apparatus elevates the grain to the hopper of the "hopper-scale; and the discharge spout delivers the grain to "the car opposite to that from which it was taken, instead of "delivering it into a bin; the receiving car being nothing "more than a substitute for the bin located in the elevator "building, and resting on the railway track, instead of resting "on some part of the building, as the bin does. It, therefore, "seems to me that the combination described in the patent "and covered by the claims is nothing but an aggregation of "old parts, with nothing done by either of the parts or by "all when combined which was not done by them when act- "ing separately.

"The specification of the patent seems to assume that the "combination of the building, the elevating apparatus, the "hopper-scale, and the discharge spouts from the bottom of "the hopper were old, and that the only new element intro- "duced into combination with them was the railroad tracks; "but it is obvious that the railroad tracks in this combination "perform no function which would not be performed by an "ordinary wagon road, upon which a wagon loaded with

" grain could come into or alongside the elevator build-
" ing, so that its load of grain might be shoveled into the chute
" in the same manner as the grain from a car is shoveled or
" dumped into the chute, from whence it could be ele-
" vated to the hopper of the hopper-scale, and from
" thence delivered by a spout into a wagon standing on
" a roadway on the opposite side of the building. The
" railroad track is a mere way upon which the cars run,
" as the road is the way upon which the wagons might
" run; and in this combination the railroad track, which
" allows a car loaded with grain to be run into or along-
" side the elevator building, and from which the grain is
" taken, performs no function and produces no result
" which it did not do when it brought the car to the
" elevator building, so that the grain it contained could
" be elevated to the hopper-scale, and thence discharged
" into a bin; and the railroad track, which carries the
" car which receives the grain from the hopper, per-
" forms no different function than it does when it fur-
" nishes the way for the car which receives the grain
" from the bins, in an elevator building. Indeed, I do
" not see how the device covered by this patent and
" claims in any essential sense differs from the ordinary
" grain elevator buildings located alongside a navigable
" stream, as they have been for many years past, with a
" railroad track on one side, and the navigable stream
" on the other side. The tracks allow the car to bring
" the grain into or alongside the elevator building; the
" elevating apparatus takes the grain from the cars into
" bins, weighing it as it is delivered into the bins; and
" from the bins it is run by delivery spouts into ships in
" the water, perhaps weighing it again in its passage to
" the ship from the bins. And I cannot see that the car

"to be loaded, or the track on which the car stands,
"performs any function different from the warehouse bins,
"or the ship, or a car standing on a railroad track and
"loaded from bins in an elevator."

Richards v. *Michigan Cent. R. Co. et al.*, 40 Fed. Rep. 165 (three cases).

Very little can be added to what Judge Blodgett has above said. The law distinguishing aggregations from combinations is well settled. See *Hailes* v. *Van Wormer*, 20 Wall., 353; *Reckendorfer* v. *Faber*, 92 U. S., 347, 357; and *Pickering* v. *McCullough*, 104 U. S., 318.

It frequently haappens, as anybody knows, that a railroad depot or eating house is placed between two railroad tracks, so that the passengers are unloaded into the depot from the cars on one side, ticketed and fed in the fixed "stationary" depot building at the "fixed" "stationary" ticket office and dining room, and then loaded into the car standing on the track at the other side of the depot. Sometimes these tracks run into the "fixed" "stationary" depot building itself. But nobody for a moment imagines that such an arrangement or placing of things in convenient juxtaposition is a machine or patentable combination, any more than would be the putting together into a chest of a complete set of carpenter's tools. It is a convenience for the carpenter to have a place in his chest for every tool, and every tool in its place. And all of the tools have a certain relation to each other, chisels, augers, planes, saws, etc., as constituting a complete set of such tools for a certain trade. But however complete, convenient and perfect the set is as a whole, and however useful to the carpenter, the chest of tools is not a combination even though the absence, or presence of the saw or the auger, or the chisel, might and would in some sense affect the usefulness of the

whole chest, and even of such tools as remained. It seems to us that elevators and warehouses and railroads and streets and canals, being all old and well known devices, there cannot be any patentable combination constructed of them by simply bringing them together in such manner that the elevator or the warehouse is located or placed between two roads. Aside from the mere juxtaposition of the elevator and the railroad tracks, the only mechanical connection or relation between them consists in the fact that they both rest upon the earth.

It has been urged, we believe, that this patent for placing the elevator between two railroad tracks might be sustained as patentable subject matter on the strength of the following statement in the specification: "The purpose of my invention "is to provide improved means for transferring and weighing "grain without mixing different lots or loads with each other, "thus preserving the identity of each lot while it is being "transferred from one car to another." But it will be noticed that in this statement the patentee does not pretend that he was the first to devise means for transferring grain without mixing different lots or loads. He only says that he has devised "*improved*" means for this purpose. And we have seen that the improvement consists in placing the transferring and weighing apparatus—the elevator—between two railroad tracks. Obviously there is no reason why a load of grain should not be transferred from one car to another by an elevator with both cars standing on the same track, or by dumping the grain into a bin and thence drawing it into the other car. It is not necessary to dump more than one load into a bin at a time if the identity of the grain is desired to be preserved. This is simply a matter relating to the manner in which the warehouseman may choose to conduct his elevator business.

But even if Mr. Richards had been the first to conceive the

idea of preserving the identity of car loads of grain, that fact could not operate to make the placing of the elevator between two railroad tracks a patentable subject matter. Because this relates entirely to the method of doing business with the structure. If a man could have a patent for the use to which he might happen to put a device there would be no end to the patents. A. might patent a bicycle for use on a city street and B, who happened to be the first to ride the same bicycle into the country, could patent the combination of a bicycle and a country road. And so on *ad infinitum*. The so-called Richards' improved grain transferring apparatus, consisting of an elevator placed between two railroad tracks, may, of course, be used to load all of the grain from one car into another car, just as any elevator, whether placed between two tracks or not, could be so used. Or it might be used to transfer the grain from two cars into one car or receptacle, thus mixing the lots together and confusing their identity, just as any elevator can be used whether placed between two tracks or not. And hence there does not seem to be anything whatever in this contention.

It seems as though the decision of the court below ought to be affirmed.

Respectfully submitted.

JOHN W. MUNDAY,

EDMUND ADCOCK.

Supreme Court of the United States.

OCTOBER TERM, A. D. 1894.

EDWARD S. RICHARDS, *Appellant,*

No. 311. vs.

MICHIGAN CENTRAL RAILROAD COMPANY et al., *Appellees.*

SAME

No. 312. vs.

THE CHICAGO & GRAND TRUNK RAILWAY COMPANY et al., *Appellees.*

Appeals from Circuit Court for Northern District of Illinois.

BRIEF FOR MICHIGAN CENTRAL RAILROAD COMPANY AND THE CHICAGO & GRAND TRUNK RAILWAY COMPANY, APPELLEES.

May it please the Court:

Bills were filed against these companies, charging infringement of patent No. 308,095, issued November 18th, 1884, to the complainant. The defendants, the appellees here, demurred, alleging that complainant's bills did not contain any matter of equity entitling him to relief; that the patent was void on its face, for the want of novelty and invention; and that it was so void because seeking to cover mere aggregations. The demurrers were argued before Judge Blodgett and overruled. The Judge at this time simply considered the

question of the validity of the patent on the ground of want of novelty, not deciding the point of aggregation.

Petition for rehearing was filed and the rehearing allowed. This petition is printed at the end of this brief as "Appendix A."

On this rehearing the court for the first time considered the question of aggregation, sustained the demurrers, holding that the patent was clearly void on its face, as not being for patentable combinations, and dismissed the bills. The decision is reported, commencing at p. 165, 40th Fed. Rep., and is printed at the end of this brief as "Appendix B."

From this decision complainant appealed to this court.

DESCRIPTION OF THE INVENTION.

Before considering the legal points involved, the court should clearly understand what the alleged invention is said to be.

There is a stationary building. Through this building run the usual railroad tracks. Within the building are, first, a hopper-scale; second, an elevator; and, third, a conveyor; the first provided with a valve "in the usual manner" (Rec., 5) and the two latter to be actuated "in any well-known way" (Rec., 6), and all, therefore, necessarily well known themselves.

There is nothing new about any one of these devices. There is no statement in the patent that any of these parts are new, and no description of them such as there must be if they were new.

Over the railroad tracks run cars, of course. From the car adjacent to the elevator the grain or other contents is shoveled into a chute, raised by the elevator to

the hopper-scale, weighed and discharged through a spout into a car on the other track.

There are two claims. (Rec., 6 and 7.) The first seeks to cover the combination of the building, the *tracks*, the elevator, the hopper-scale with a valve, and the discharge spout. The second differs from the first in including a plurality of some of the above devices, the conveyor and certain valves.

That is all there is of it. Nothing but the "combination" (?) of an elevator, with its usual contents, and *two railroad tracks placed adjacent thereto.* The question here raised is stated in the petition for the rehearing as follows:

"*Is there anything patentable under our law in placing an elevator by the side of a railroad, or between two railroads, and then calling it a combination?*"

THE RICHARDS PATENT IS FOR MERE AGGREGATIONS, AND THEREFORE VOID.

This presents a question arising squarely on the face of the patent. The elements described in the specification and shown in the drawings are all well known and of the simplest construction, and the question whether the claims cover proper combinations or mere aggregations can be readily determined from an inspection of the patent. It is eminently proper that it should be so, to avoid the great expense of taking testimony, which, if our contention is right, would be unnecessary. It is a question of which this court could take judicial notice even had it not been raised by demurrer.

Slawson v. *R. R. Co.*, 107 U. S., 649–52, and cases.

III Robinson on Patents, Secs. 962, 1022, 1025, and cases.

IN A TRUE COMBINATION—

The union of elements must necessarily produce effects *beyond the sum of the effects produceable by all the elements in their separated state.*

I Robinson on Patents, Sec. 156.

National Cash Register Co. v. *American Cash Register Co.*, 53 Fed. Rep., 367–71.

Hailes v. *Van Wormer*, 20 Wall., 353–68.

On the other hand,

A CLAIM IS FOR AN AGGREGATION—

Where the joint result is nothing more "*than an aggregate of old results.*"

Hailes v. *Van Wormer*, 20 Wall., 253–68; or

Where it is only "*the mere adding together of separate contributions.*"

Pickering v. *McCullough*, 104 U. S., 310–17–8; or

Where the separate parts act just as they did before they were brought into the alleged combination.

I Robinson on Patents, Sec. 154.

Thatcher Heating Co. v. *Burtis*, 121 U. S., 286–90; or

Where the mechanical operation and effect of all the devices save one are the same, whether that one device is present or not.

Fond du Lac Co. v. *May*, 137 U. S., 395, 406–7.

AUTHORITIES.

I will quote only from a few decisions, and as briefly as seems possible.

I believe the doctrine that an aggregation is not patentable was first set forth in this court in the case of *Hailes* v. *Van Wormer*, 20 Wall., 353–68–72; 1873. The

court says, by Mr. Justice Strong, on page 368 (Italics are mine, here and elsewhere):

> "The result must be a product of the combination, and not *a mere aggregate of several results, each the complete product of one of the combined elements. Combined results are not necessarily a novel result*, nor are they an old result obtained in a new and improved manner. *Merely bringing old devices into juxtaposition, and there allowing each to work out its own effect without the production of something novel, is not invention.*"

The "combination" here was of a flaring fire-pot, a contracted reservoir over the fire-pot, illuminating openings and descending flues or passages. There was no question but that the patented stove was better than any former stove in its particular line, and that each of the elements claimed aided in producing this better stove, so that there was a new result. But the court says, on p. 372:

> "The results of its construction are not changed by the fact that a flaring fire-pot and a supply-reservoir with a contracted discharge end and openings for illumination are used in the same stove. It still operates to conduct the products of combustion to the base and into the exit flue. *No new operation is given to it by the combination.* . . . This, then, is mere aggregation of devices, not invention, and consequently the use of these devices, either singly or together, cannot be held to be any infringement of rights belonging to the complainants."

Would the claim have been improved by including as an element the road over which the coal for the stove was drawn in a wagon? This would be absurd, yet there is here the same "combination" between scales and tracks.

In this present case the result of the operation of the tracks is not changed by the fact that an elevator with its contents is placed beside them. Nor is the working of

the hopper affected by the fact that it stands in a building through which run railroad tracks. If so, we have a mere aggregation under the decisions.

Thatcher Heating Co. v. *Burtis*, 121 U. S., 286–90–3–4–5. 1886. Mr. Justice Matthews.

The alleged invention here consisted of a fireplace stove having a cylinder extending into the room, a fuel magazine in the cylinder, and an opening through which the magazine could be fed from above. The device was a useful one, and was new, in the sense that it had never existed before in precisely the same form. Judge Wallace decided the case in the lower court, and this court quotes from his opinion, on p. 290:

> "There may have been patentable novelty in the means he (the patentee) employed to adjust the parts in the new organization, but there was none in merely bringing those parts together. They did not perform any new function in the new arrangement. *The fuel magazine does just the same work in the new structure it did in the ordinary coal stove. All the other parts of the fireplace heater operate precisely as they would if the ordinary fuel pot were used instead of the substituted magazine.* The parts do not *co-operate* to produce a new result. By their aggregation the new structure contains all the advantages which resided before separately in several structures. The new heater is, therefore, a better heater than any which preceded it, but it does not present a patentable combination."

The appellants contended that a new result was attained, but the court said (p. 294):

> "The new and improved result in the utility of a fireplace heater cannot be said to be due to anything in the combination of the elements which compose it, in any other sense than that it arises from bringing together old and well-known separate elements, which, when thus brought together, operate separately, *each in its own old way.* . . .

> "In this view of the case it is impossible to distinguish it, so far as the rule of decision is concerned, from the cases of *Hailes* v. *Van Wormer*, 20 Wall., 353. . . . There is no escape, we think, from the conclusions reached by the Circuit Court. Its decree is therefore affirmed."

So in the present case. If there was any invention in the means for bringing these devices together, the patentee should have set it out. But he has merely claimed the "combination," and that a mere aggregation. Following the language in the Thatcher case, the railroad tracks perform no "new function in the new arrangement." The elevator does precisely "the same work" in the patented structure that it did when used in other places. The building and all the other parts operate precisely as they would if the ordinary roadway were used instead of the railroad track. They add nothing but their separate effects. Clearly, the function of the railroad tracks is in no way modified by the fact that they run through an elevator building, or any other building. They are railroad tracks pure and simple, both before and after they are placed in the building. They are there to permit cars to travel over them, and they would perform neither more or less than that function, whether the hopper-scales, or the conveyor, or the elevator, were in the stationary building or not.

Fond du Lac County v. *May*, 137 U. S., 395–406–7.

This is one of the best known cases in this court on this question. The patent sought to cover certain devices for locking prison cells, combined with a grating interposed between the cells and the mechanism for operating the locking devices, so that the prisoners could not attack the jailer while he was locking them in. The device was better than anything formerly used, and many counties

paid royalty for their alleged infringement. In the lower court the defendant moved for a verdict on the ground, among others, that the alleged combination was a mere aggregation. The court refused to so rule, and a verdict was rendered for the plaintiff. This was reversed. Mr. Justice Blatchford says in his opinion, on p. 203?

> "We are of the opinion that the court ought to have directed a verdict for the defendant on the ground that the patent was void, and that judgment must be reversed."

And again, on p. 407, the court says:

> "*As the mechanical operation and effect of the patented devices are the same, whether there be a grating or other barrier or not, there is no patentable combination between the devices and the grating. The grating performs no mechanical function and has no mechanical effect. The case is one of mere aggregation.*" (Citing many cases).

I am unable to distinguish the present case from that last cited. In this case "the mechanical operation and effect of the devices" is, without question, precisely the same whether there be railroad tracks present or not. The tracks are quiescent while the other devices are in use, and the other devices are not used when the tracks are. It is over the tracks that cars are brought to the building; once at the building, so far as the operation of the other devices goes, the tracks might be taken away, the cars might be run on to a platform, or supported on jacks. Either of these changes would have nothing to do with the action or results of the action of the conveyor, elevator or hopper-scales. If this be true, there is, under the decision in the May case, no patentable combination between these tracks and the other devices.

Again, the grain might equally as well be brought to the elevator in wagons over an ordinary road. If this be

true, it must be evident that the *tracks* in no way affect the operation of the elevator building and its contents.

Suppose the elevator be omitted, and that cars containing grain came to the building over tracks, and the grain was shoveled from the cars *by hand* into the scales, and from the scales discharged by the spout into another car, would any of the devices act any differently, or to attain any different result than in the Richards patent? Clearly not. Yet, unless they would act differently when the elevator was omitted, there is no combination between the devices and the elevator.

Similarly with every one of the elements. The thing is utterly, upon its face, absurd. What possible combination is there between a railroad track and a building, or between a track and a building and devices in the building?

Just as this brief is going to print comes another decision, rendered by this court March 4th, 1895, in the case of *Palmer* v. *Corning*, 70 O. G., 1497. In this case the court, speaking by Mr. Justice White, quotes several of the paragraphs above quoted, declares them to be the law, and decides the particular case in accordance with them.

See also *Wright* v. *Yuengling*, 69 O. G., 639. Mr. Justice Brown.

Reckendorfer v. *Faber*, 92 U. S., 347. Mr. Justice Hunt.

Packing Co. cases, 105 U. S., 566–74. Mr. Justice Woods.

Stephenson v. *Brooklyn Railroad Co.*, 114 U. S., 149–58.

Beecher Mfg. Co. v. *Atwater Co.*, 114 U. S., 523–4. Mr. Justice Gray.

Hendy v. *Miner's Iron Works*, 127 U. S., 370–5. Mr. Justice Blatchford.

Adams v. *Bellaire Stamping Co.*, 141 U. S., 539–42. Mr. Justice Field.

Illustrations on this point of aggregation are endless. Several are presented in the petition for a rehearing, and in the opinion of the lower court, to which this court is respectfully referred as part of my argument.

To cite a few additional ones: There might as well be a combination of a mail wagon, the road over which it travels to the post office, the elevator in the post office by which the mail is carried to an upper floor, scales on which it is weighed, and the carriers by which it is delivered to its destination. Between the ocean, the wharf to which the ship comes at the end of its voyage, the steam shovel, elevator or other mechanism for raising the grain out of the ship and discharging it into a scale or bin, the spout whereby it is again discharged into a car, wagon, bag, etc., and the building whereby it is covered.

Well does the petition for a rehearing state that if this patent be sustained a new field of invention has been opened. No matter what the elements, it will be enough to label them "combination" to have a valid patent, no matter how gross the lumping together of the parts may be.

Another point: So far as the question of aggregation is concerned, it makes no difference whether the devices are novel or not. I shall consider the question of novelty hereafter, and show that these devices were all old. At present I am simply discussing the plain legal proposition

that the result of an alleged combination must be something more than the mere arithmetical addition of the results of its parts, and with this question novelty has nothing to do. Even if Mr. Richards was the first man, which of course I deny, who carried on the various steps which he says he has carried on, the point of aggregation remains the same. In the May case the "*combination*" was new. It had been repeatedly sustained by the lower courts, but this court swept aside the question of novelty, and held one claim of the patent bad purely and simply on the ground of aggregation. After all, what has novelty to do with it? The question is whether the ultimate result of the devices placed in juxtaposition is in any way changed by such juxtaposition. Supposing that the hopper-scale had never been heard of before, still *in this combination* it performs no function whatsoever that it would not perform anywhere. Supposing that railroad tracks had, for the first time in history, been laid adjacent to this building with its old devices, it would be obvious that the ultimate result of the juxtaposition of these parts would be simply the lump sum of the separate results of the separate parts. The patentee in that case would have mistaken his rights. He should have patented the hopper-scale, or the railroad tracks, or any other part that was new *by itself alone*. Then any one that used his invention, no matter what the combination, would be an infringer.

Here he has chosen to patent the combination, and by that he must stand or fall. *Reckendorfer* v. *Faber*, 192 U. S., 347–56. If, however, it be no true combination, but a mere bringing of various elements within convenient working distance of each other, then his patent must be bad.

Let us examine the separate elements of these claims, and see whether their total result is more or less than the sum of their separate results. There is, *first*, the fixed or stationary building—that is, *any* building to hold and protect some of the other devices, just as it would tables, chairs, hardware or anything else. *Second*, the tracks F and G. They are the same tracks, and would operate in the same way, were no building present. *Third*, the elevator, which would raise grain, etc., wherever located. *Fourth*, the elevated hopper-scale, which might be anywhere, *so far as its operation goes*. *Fifth*, the discharge-spout which discharges from the hopper wherever it be, though there are no tracks or elevator within a thousand miles. In claim 2 there are also the conveyor and its valves, which, like the elevator, go on with their business undisturbed by the proximity of track, building, scales or spout.

Now, these being the parts, what is the result said to be obtained? It is the transfer of grain, etc., from one car to another, weighing it in transit. That is, it is the carrying of grain, etc., over track F + the elevating by elevator I + weighing by scale H + the discharge by spout P + the reception by car on track G + the protection and support by building A. It is that "mere aggregate of *several results*, each the *complete product* of *one* of the combined elements," which this court declared in the Hailes case to be unpatentable.

It may be said the present "combinations" are patentable because all the parts tend to a single result, viz., the transfer of grain from one car to another, weighing it during the process. How far can this be carried? If all that is necessary is that the elements aid in attaining the final result, why not include the cars, the grain, the fields in which the grain was grown, and the

mowing and thrashing machines? They are all instrumental, even essential, in producing the final result—that is, the delivery of grain to the cars on track G, and as relevant and proper as the "tracks F and G."

If it be said that the result is "new," then I say that novelty in a patentable sense means *inventive novelty*, or, at least, that *novelty* alone is not sufficient. On this Judge Butler laid down what seems to me exactly the right ground, that two things were necessary to a patentable combination: "first, a *novel* assemblage of parts *exhibiting invention;* second, the *co-operation* of the parts in producing a new result." *Hoffman* v. *Young*, 2 Fed. Rep., 74–7. See *Thompson* v. *Boisselier*, 114 U. S., 1–11. None of the cases go to the length of saying that where there is no *invention* a patent may be sustained because the result was new. Of course I do not, in this case, admit that any novel result has been attained. The mere keeping of things separate was not novel at the date of Richards' "invention." Any of your Honors must be fully aware that it has not been customary in elevators for the last twenty years to mix corn and wheat in the same bin, and that different lots of corn could as easily be kept separate. This question, however, more properly belongs to the next head—that

THE PATENT IS WHOLLY BAD ON ITS FACE FOR WANT OF NOVELTY AND INVENTION.

EACH OF THE SEPARATE ELEMENTS OF THE TWO CLAIMS OF THE RICHARDS PATENT IS CONCLUSIVELY PRESUMED TO BE OLD.

A. *Because of failure to claim them separately.*

This court has repeatedly decided that to show or describe a device in a patent without claiming it is to dedi-

resorting to any means for that purpose which he may deem safe and proper."

Brown v. *Piper*, 91 U. S., 37, 42.

The court in this case held that it could take judicial notice of the well-known ice-cream freezer, "giving it the same effect as if it had been set up as a defense in the answer, and the proof were plenary."

> "We cannot fail to take judicial notice that the thing patented was known and in general use long before the issuing of the patent."
>
> *Terhune* v. *Phillips*, 99 U. S., 592–3.

See, also, *Slawson* v. *Grand Street R. R. Co.*, 107 U. S., 649–52, where several of the cases on this point are cited; *Phillips* v. *Detroit*, 111 U. S., 604–6, where this court took into consideration the common and well-known form of constructing street pavements and sidewalks in which cobble-stones and bricks were used. *Preston* v. *Manard*, 116 U. S., 661–4; *Dunbar* v. *Myers*, 94 U. S., 178–98; Black Diamond Co. v. Excelsior Co., 70 O. G., 1797.

Is there any question but what all of the devices named in Richards' claims were well known? I think that this court will take judicial notice that for more than two years prior to the date of filing of Richards' application, on February 11th, 1884, stationary buildings were tolerably well known; that railroad tracks and their functions were known all over this country; that hopper and other forms of scales and discharge-spouts were in extensive and familiar use, and that conveyors and elevators had been in use longer than the memory of any member of this court can trace them.

Now, the parts being all old and their functions well known, was there the slightest exercise of the inventive faculty in bringing them within convenient working distance of each other? If the answer to this question be "No," there is

an end of this patent, for there must be *actual invention.* It must not be *mere convenience;* it must not be merely the "*expected skill of the calling,*" referred to by Justice Bradley; it must be the *actual exercise* of the *inventive faculty.* This starts right at the very bottom of the patent law.

> "So it is not enough that a thing *shall be new*, in the sense that in the shape or form in which it is produced it shall not have been before known, and that it *shall be useful*, but *it must*, under the constitution and statute, *amount to an invention or discovery.*" Mr. Justice Blatchford in *Thompson* v. *Boisselier*, 114 U. S., 1–11, and cases cited.

Now, as all the sub-combinations are presumed to be old, according to the Clements case *supra*, we may presume, that the combination of the stationary building, with its hopper-scale, elevator and conveyor, was old. This is not a violent presumption, because it is such a well-known fact that any court would take judicial notice of it. From this old sub-combination is made the combination of the claims, by adding the railroad tracks. Can this be dignified by the name of invention? Particularly when railroad tracks have been laid adjacent to and within buildings of all sorts from the time when railroads were first built. The same argument can be made with reference to the elevator, etc.

There seems to be no escape from this conclusion. There is not the slightest doubt but what grain elevators have been in use in this country for years prior to Richards' "invention." Every member of this court must have repeatedly seen such elevators, passed by them, and seen them working, all over the country. It comes, after all, to this: *Was there any possible invention in running two railroad tracks through a building*

when the building and the contents were perfectly well known?

It may be insisted, that in spite of the decisions of this court we have no right to assume that any sub-combination was old, but only that the several elements were old. There is no question but what the sub-combination of elevator and contents already existed. But suppose we admit simply that the parts separately were old, I still fail to see any invention. Suppose a man has a hopper-scale and puts it in a building. Is there any invention in that? Suppose, for convenience, or any other reason, he wants to put it on the second or third story; any invention in that? Suppose, after putting it there, he needs means for getting the grain up to it, and puts into his old building, with the old scale, the old and well-known elevator and conveyor, which act there just as they have always acted, and as he knew they would act before he put them in. There he has the building, the hopper-scale, the elevator and conveyor; is it possible he has made any invention? Clearly not. But now he says: "I want to get my grain out of railroad cars, which are perfectly well known to me, with all their functions. But the railroad cars cannot conveniently travel on the ordinary road which passes any building. I therefore lay down tracks from the nearest line of railroad, thereby affording means for the cars to get to my building." Has he made an invention now? Clearly not. Yet this is all that Richards has done. He knew perfectly well what each of these elements was, what purposes it accomplished, and he took each element for the particular purpose which it alone could accomplish, and he used it to accomplish that purpose. *The elements are within convenient working distance of each other, that is all.*

If Richards' lumping together of old devices is patent-

able, then any man can take a patent on laying railroad tracks adjacent to any building, containing any number of devices, provided no one has laid railroad tracks adjacent to a building with just such devices before. I wish to be fully understood. I insist, of course, that the whole Richards scheme is as old as the hills, or, at any rate, as old as railroad tracks and elevators, but even if he were the first to lay tracks adjacent to an elevator, then if this patent be sustained, I say that any one can take any building with its contents, however well known, however familiar we may be with their functions, provided only a railroad track has not been laid adjacent to that building, lay the track there and get a patent. The patent will be as good as this one, it can be no worse.

Considerable time has been spent in showing that these parts were old, because I know that to be the fact and believe it to be the law.

It may, however, be insisted that some one of the elements is new, and that therefore the patent should be sustained. To this there are two answers: First, even if a part be actually new with Richards, yet the only thing he has sought to cover is the *combination*, and there was no exercise of invention in that. Second, if any element was new, the patent falls because there is no description of such novelty. If he had discovered a new form for his scales, or other element, he should have described it. Not having done so, either the device is well known, so as to require no description, or the patent is void.

Wayne v. *Holmes*, 2 Fisher, 20.
O'Reilly v. *Morse*, 15 How., 62–119.
Bene v. *Jeantet*, 129 U. S., 683–5.
Robinson on Patents, Sect. 483.

Appellants may say these lumped-together devices of Richards' attain a *new result*, and therefore the combination must be patentable, referring to cases that say a combination to be patentable must attain a new result.

But it must be a *new result* involving *invention*, and "combined results are not necessarily a novel result." Let us see what Richards' "result" is.

He keeps the grain, etc., unmixed with other grains, etc. Truly a great result!

Is there any patentable invention in keeping grains separate or unmixed? Have not corn, oats, barley, etc., always been kept separate? Certainly this is matter of common knowledge, of every-day experience. Is there any invention in keeping various kinds of one cereal separate when different cereals have been so kept?

Suppose a single car of corn comes to an elevator, that the corn is elevated to the scales, weighed, and thence discharged into a bin. Then suppose another car comes empty to the elevator and the grain is discharged from the bin into this car. There is nothing new here, nothing that involves invention. Yet all Richards has done is to have his cars at the elevator simultaneously, and to discharge the corn direct from scales to car, instead of first into a bin.

But appellants say he keeps the corn unmixed with other corn, as it would not be if the contents of the several cars be placed in the same bin. Would it involve invention to substitute a *series of bins* to hold the corn from the separate cars, for the one bin?

I submit that the idea of keeping grain, etc., separate involves no possible invention, and that it involves no possible novelty. Also that Richards' devices are all old, and their functions well known. That these functions are unchanged in the alleged combinations of Richards'

claims. That there is, therefore, no "novel result involving invention," and no patentability.

There is no doubt but what grain has been heretofore brought to a stationary building, raised by an elevator to the hopper-scales, weighed and discharged into a bin, and subsequently discharged from that bin into a car. Where is the invention in substituting the car for the bin?

At the most, this is but the application of old, well-known devices to a use analogous to that for which they were necessarily used before Richards' alleged invention. Admit, for argument, that the grain, etc., is now discharged from the spout into the car, instead of a bin. Are not these uses of the spout analogous? And the uses of all the other elements remain the same in every respect, no matter into what the spout discharges.

If so, the patent is void under repeated decisions of this court.

Roberts v. *Ryer*, 91 U. S., 150–7.
R. R. Co. v. *Truck Co.*, 110 U. S., 490–6.
Aron v. *R'y. Co.*, 132 U. S., 84–90.
Lovell Mfg. Co. v. *Carey*, 147 U. S., 623–37.

In the last case this court said, after quoting many cases, that the proposition was established

> "that the application of an old process or machine to a similar or analogous subject, with no change in the manner of application, and no result substantially distinct in its nature, will not sustain a patent, *even if the new form of result had not before been contemplated.*" (Italics are mine.)

To make a case an exception to this rule, there must have been changes in the old devices amounting to invention to adapt them to the new use. Here there were no changes at all.

Appellants say the result is useful—possibly—but *util-*

ity alone this court has held repeatedly will not sustain a patent, nor be anything like conclusive as to *invention*. See cases already cited, and, also,

McClain v. *Ortmayer*, 141 U. S., 419.
Grant v. *Walter*, 148 U. S., 547-56.

Therefore it seems to me that the decrees should be affirmed: First, because the Richards patent is wholly void, its claims not being for true combinations, but for aggregations merely; second, because the parts were all old, and there was no possible invention in combining them; third, because, if any of the parts were new, they are not claimed alone, and no invention is displayed in the combination; lastly, because, if any of the parts were new, and this be thought to make a difference, the patent is void for want of a description of such novelty.

I therefore ask that the decrees appealed from be affirmed at the costs of the appellant.

Respectfully submitted,
GEORGE S. PAYSON,
Counsel for Michigan Central Railroad Co. and The Chicago & Grand Trunk Railway Co.

APPENDIX "A."

UNITED STATES CIRCUIT COURT.

NORTHERN DISTRICT OF ILLINOIS.

IN CHANCERY.

E. S. RICHARDS
v.
MICHIGAN CENTRAL R. R. CO. *et al.*

SAME
v.
CHICAGO & GRAND TRUNK RY. CO. *et al.*

PETITION FOR REHEARING.

The defendants respectfully ask for a rehearing in the above cases for the following reasons:

I.

The point presented by the defendants' demurrer to the bill has not been decided by the court. The demurrer is special, and presents simply the question whether the complainant's patent is not void on its face as being for an *aggregation* merely, and not a patentable combination.

Or, more specifically, IS THERE ANYTHING PATENTABLE UNDER OUR LAW IN PLACING AN ELEVATOR BY THE SIDE OF A RAILROAD, OR BETWEEN TWO RAILROADS, AND THEN CALLING IT A COMBINATION?

This is the question intended to be raised by the demurrer, and this question the court has not yet decided.

It is a question mainly of law, and is to be determined solely from an inspection of the patent. It is not at all a

question of novelty. Whether the elevator, or any part of it, was new can make no difference, for there is no claim for the elevator. If there had never been an elevator before, if there had never been a railroad before, it would have made no difference.

It is true that the Supreme Court has decided that whatever is shown, but not claimed, in a patent is conclusively presumed to be old; *Gould* v. *Rees*, 15 Wall., 191; *Brown* v. *Selby*, 23 Wall., 224; but we do not need to insist upon that. Our present contention simply is that there can be no patentable combination between an elevator and a railroad track as they are shown and described in the plaintiff's patent.

Again, this is a question that does not depend at all upon evidence. There is no evidence; there could be no evidence that would aid the court in deciding it; and no evidence that the court would receive for that purpose. The question will have to be decided on final hearing precisely as it would be decided on demurrer, solely on the face of the patent.

The court, therefore, is not called upon to take judicial notice of anything, or to assume that any part of the devices shown in the patent was old. It may be assumed, on the contrary, that every part was new; the question will still remain the same: Is either of the claims a claim for a patentable combination?

The court was undoubtedly misled by the statements of complainant's counsel, and was induced to believe that the demurrer, like most others in similar cases, was based on the assumption that the patent was void for want of novelty. The opinion delivered by the court goes wholly on that ground, and says nothing as to the point actually intended to be raised.

Yet, certainly that question ought to be decided. It lies

at the very threshold of the case. If decided, as we believe it must be, in favor of defendants, it is an end of the case. Why, then, should defendants be compelled to incur the labor and expense of taking testimony, of examining experts, of wading through a mass of prior patents, when all this labor and expense can be so easily saved? Why should the court be called upon to perform so much useless labor?

As already suggested, this evidence, when produced, will throw no light on the question here at issue. The court will still have to decide it from an examination of the plaintiff's patent alone.

II.

That both the claims in the patent are void as being for mere aggregations, seems too clear to admit of argument or doubt. It seems not too much to say that the patent is bad, even to absurdity. In fact, it would be difficult to imagine a patent more clearly worthless than this.

In both the claims we find a so-called combination of a railroad track with an elevator building; with the elevator; with the hopper-scales; with the discharge-spout; with the track on the other side.

The mere statement ought to be sufficient. It cannot be pretended that there is any co-action between the railroad track and the elevator, or the hopper-scales, or the discharge-spout. The operation of each and all of those parts is precisely the same as it would be if no railroad track were there.

Nor, on the other hand, is the operation of the railroad track in anywise affected or modified by that of the elevator, the hopper-scales or the discharge-spout. The track performs precisely the same functions, and in precisely the same way, as any other track. Take away the eleva-

tor; and the track goes on operating just as it did before.

The track is simply a means for moving the grain to the elevator, or to any other desired point. The fact that the cars stop at the elevator does not affect the operation of the elevator. It simply gives the elevator something to do; it in nowise affects the manner of doing it.

If the grain were brought to the elevator in a common wagon, over a common road, the operation of the elevator would still be the same. And in that case a claim might just as well be had for the combination of this common road with the elevator as for the combination of the railroad track with the elevator. The one claim would be no more absurd than the other.

Or suppose that, instead of a railroad, there were a lake or a river; or (if an artificial highway is required), a canal, on one side of the elevator, so that the grain should be carried either to or from the elevator on boats; could it be pretended for a moment that there was a patentable combination between the canal and the elevator, or between the canal and the hopper-scales?

Again, if these claims are good, then there might be a claim for the combination of a threshing-machine with the railroad track on which the grain to be threshed was brought to the spot; or for the combination of the track and a wood-sawing machine stationed by the side of it.

In short, whenever there was a machine for doing anything, a patent could be had for the combination of that machine and the railroad track on which the material to be treated was transported.

And to present this absurdity in a yet clearer light, it would be wholly unimportant in the case supposed whether the machine itself was old or new; for it is not the machine that is patented, but the combination of the machine with the railroad track.

So in the present case it is of no importance whether the plaintiff's elevator, by itself, has anything new about it or not; the only question is whether there is a patentable combination between the elevator and the two railroad tracks.

III.

The law on this point is well settled. We need only refer to *Hailes* v. *Van Wormer*, 20 Wall., 353; *Reckendorfer* v. *Faber*, 92 U. S., 347, 357; and especially *Pickering* v. *McCullough*, 104 U. S., 318.

No one can pretend that the plaintiff's devices produce any new effect because used in combination; that the hopper-scales perform any other or different function when placed near the railroad track than they would perform if the track was a thousand miles away; or that their operation is in the slightest degree modified by that of the railroad track; or that the placing them near each other is anything more than a mere mechanical juxtaposition.

This case, however, goes far beyond any of those just cited. The several parts there claimed were in fact united. They all together made up a complete, unitary machine. There was some semblance of a combination.

In *Hailes* v. *Van Wormer* the result was to make a better stove; in *Pickering* v. *McCullough*, a better crucible. But here there is not even a mechanical union; there is not even an aggregation. The elevator becomes no part of the track; the track no part of the elevator. It is precisely like a coal-cart provided with a chute for conducting the coal into a cellar. The coal-cart and chute may be new and patentable, but no one would ever think of patenting the combination of the cart and cellar; still less of the cart and furnace; and still less, if possible, of the furnace and the street. Nor would it help the matter if the coal were

brought to the cellar on a railroad track, instead of on a Nicholson pavement. And yet the operation of the furnace would be just as much affected by the railroad track as the operation of the hopper-scales is affected by it, in the case at bar.

That case in fact is without a precedent. It is absolutely *sui generis*. No one before ever supposed he could have a patent simply for placing a house, a shop, or a machine between two roads, no matter how convenient such an arrangement might be, and then calling it a combination.

If this can be done, if such a patent is good, then an entirely new field of invention is opened. It will be a great and startling enlargement of the law.

These, at least, are the views entertained by the defendants, and in which they cannot help thinking that the court, now that his attention is specifically called to them, will agree. It is a case, unfortunately, in which argument amounts to little. For after all, the strongest argument is the simple statement that here is an elevator, of which no part is claimed by itself, placed for convenience between two railroad tracks, and in that placing alone the alleged invention has to be found.

Will the court then compel the defendants to go to the great expense and trouble of defending further against such a patent? They may prove, indeed, that such an arrangement was old, and thus defeat the patent for want novelty; but why should they be required to do this, if the patent be, as they believe, beyond all question bad upon its face?

Respectfully submitted,

GEORGE PAYSON,
Counsel for Defendants.

APPENDIX "B."

OPINION OF JUDGE BLODGETT, REPORTED IN 40TH FEDERAL REPORTER, 165.

Richards v. *Michigan Cent. R. Co.* (Three Cases.)

BLODGETT J.: These are bills in equity, charging the respective defendants with the infringement of a patent granted to complainant, November 18, 1884, for a "grain-transferring apparatus," and praying an injunction and accounting. The apparatus described in and covered by the patent consists of a stationary elevator building, with two railroad tracks passing into or alongside the building on opposite sides (I see no reason why the device would not operate equally as well if the tracks passed alongside the building as if they passed into it), so that ordinary grain-carrying railway cars can stand on each track opposite, or nearly opposite, to each other; an elevating apparatus, so arranged as to elevate grain from the chute, or pit, into which it is shoveled or dumped from the cars to a scale-hopper in the upper part of the building; and a spout leading from the bottom of the hopper, so as to carry the grain, after it is weighed, to the car on the opposite track. The patent contains two claims:

> "(1.) The combination of a fixed or stationary building, the tracks F and G, an elevator apparatus, and elevated hopper-scales, having a fixed or stationary hopper, provided with a valve or slide in its bottom, and a discharge-spout P, adapted and arranged for discharging the grain directly from the said hopper into a car, substantially as specified and for the purposes set forth.

"(2.) The combination of a fixed or stationary building, the tracks F and G, two or more elevating apparatus, a series of two or more elevated hopper-scales having fixed or stationary hoppers, each having a valve or slide in its bottom, the discharge spouts P P, adapted and arranged for discharging the grain directly from the said hoppers, respectively, into a correspondingly arranged car, a horizontal conveyor, the chutes J J having therein the doors or valves K and L, and the slides or doors O O, all arranged substantially as shown and described, with relation to each other, and for the purposes set forth."

Defendants have demurred to the bill on the ground that the patent does not show a patentable combination, but only shows an aggregation of old parts, none of which perform any new function in the combination from what they did when operating separately. As the claims of this patent are only combination claims, and none of the parts combined are claimed as new, it may be presumed that the parts or elements so combined are all old. *Gould* v. *Rees*, 15 Wall., 191. *Brown* v. *Selby*, 23 Wall., 224. The patentee does not claim to have invented an elevator building, nor a grain-elevating apparatus, nor a hopper-scale, nor a spout to empty the hopper, nor railroad tracks, nor railroad cars. The court will assume from common knowledge that it was old at the date of this patent to construct buildings with railroad tracks running into or alongside of them, and with apparatus in such buildings for elevating into the upper part thereof grain brought in cars upon such tracks, and that it was old to elevate the grain into a hopper-scale where it was weighed, and from whence it was run into bins by a spout. It was also old to load cars by running grain into them from a bin in an elevator building by means of a spout.

The claims in the patent in question are for a combin-

ation of the following elements or parts: (1) A stationary building; (2) two railway tracks which must pass into or on the opposite sides of such building; (3) elevating apparatus; (4) an elevated hopper-scale with a valve or slide in the bottom; (5) a discharge-spout, adapted for discharging the grain directly from the bottom of the hopper into the car on the opposite side of the building from the car from which the grain was taken. The conveyor and additional chute and additional delivery spout of the second claim being only used when the car to be unloaded does not stand directly opposite to the one into which its contents are to be transferred, hence there is a provision duplicating some of the operative parts, and adding the conveyor. Now it is evident that none of the parts or elements of this combination perform any different function in the combination than they respectively did when operating separately; and it is equally clear that the result of the operation of these elements, as combined, is the same and no more than the sum of the results of these elements when operating separately. The railroad tracks bring the cars to the building; the building supports the elevating apparatus; the elevating apparatus elevates the grain to the hopper of the hopper-scale; and the discharge-spout delivers the grain to the car opposite to that from which it is taken, instead of delivering it into a bin; the receiving car being nothing more than a substitute for the bin located in the elevator building, and resting on the railway track, instead of resting on some part of the building, as the bin does. It therefore seems to me that the combination described in the patent and covered by the claims is nothing but an aggregation of old parts, with nothing done by either of the parts or by all when

combined which was not done by them when acting separately.

The specifications of the patent seem to assume that the combination of the building, the elevating apparatus, the hopper-scale and the discharge-spouts from the bottom of the hopper were old, and that the only new element introduced into combination with them was the railroad tracks; but it is obvious that the railroad tracks in this combination perform no function which would not be performed by an ordinary wagon road, upon which a wagon loaded with grain could come into or alongside the elevator building, so that its load of grain might be shoveled into the chute in the same manner as the grain from a car is shoveled or dumped into a chute, from whence it could be elevated to the hopper of the hopper-scale, and from thence delivered by a spout into a wagon standing on a roadway on the opposite side of the building. The railroad track is a mere way upon which the car runs, as the road is the way upon which the wagons might run; and in this combination the railroad track, which allows a car loaded with grain to be run into or alongside the elevator building, and from which the grain is taken, performs no function and produces no result which it did not do when it brought the car to the elevator building, so that the grain it contained could be elevated to the hopper-scale and thence discharged into a bin; and the railroad track, which carries the car which receives the grain from the hopper, performs no different function than it does when it furnishes the way for the car which receives the grain from the bins, in an elevator building. Indeed, I do not see how the device covered by this patent and claims in any essential sense differs from the ordinary grain elevator buildings located alongside of a navigable stream, as they have been for many years past,

with a railroad track on one side and the navigable stream on the other side. The tracks allow the car to bring the grain into or alongside the elevator building; the elevating apparatus takes the grain from the cars into bins, weighing it as it is delivered into the bins; and from the bins it is run by delivery spouts into ships in the water, perhaps weighing it again in its passage to the ship from the bins. And I cannot see that the car to be loaded, or the track on which the car stands, performs any function different from the warehouse bins, or the ship, or a car standing on a railroad track and loaded from bins in an elevator.

The former order overruling the demurrer in these cases is set aside, the demurrer sustained, and the bills dismissed for want of equity.

Office Supreme Court, U. S.
FILED
APR 23 1895
JAMES H. MCKENNEY,
CLERK.

Supreme Court of the United States.

October Term, A. D. 1894.

EDWARD S. RICHARDS,
Appellant,

No. 311. *vs.*

MICHIGAN CENTRAL RAILROAD COMPANY, *et al.*,
Appellees.

Appeal from Circuit Court for Northern District of Illinois.

SAME

No. 312. *vs.*

The CHICAGO & GRAND TRUNK RAILWAY COMPANY, *et al.*,
Appellees.

SUPPLEMENTAL BRIEF FOR APPELLEES.

GEORGE S. PAYSON,
Counsel for Appellees.

Beresford, Printer, City of Washington.

Supreme Court of the United States.

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Appellees.

Appeals from Circuit Court for Northern District of Illinois.

SUPPLEMENTAL BRIEF FOR APPELLEES.

May it please the Court:

Two points are considered in the brief for appellant which were not argued in my principal brief because they appeared immaterial to me. They seem so still, but I make brief answer lest silence seem to admit them material.

Counsel says the Illinois Supreme Court rendered an opinion, which, "simply on a face reading" is "controlling" as to the validity of the Richards patent. It *is* simply on a "*face*" reading, if at all. On a *careful* reading this opinion seems to

me of no importance, and of course is not "controlling" on this Court.

The suit referred to was solely for breach of a contract made with Richards, who recovered damages for such breach.

It was not a patent suit; had it been, the Illinois court would have had no jurisdiction.

The validity of the patent was not called in question, considered, or decided one way or the other. None of the points here raised was involved, or passed upon. It was a simple contract case.

Again, it appears from its decision that the Illinois Court referred solely to a *process patent* owned by Richards. The patent here involved is clearly for an *apparatus*, not for a *process* at all. If Mr. Richards has a process patent he has not sued upon it here.

The use of an old apparatus for a new process does not impart patentability to the *apparatus*. If I have a hammer well known for driving nails, and I use it for a new process of cracking ice, I can get a patent for the process, (if it involve invention), but surely none on the old hammer. So here, if Richards has found a process involving the use of an old elevator and old tracks, this alone does not entitle him to a valid patent on an alleged "combination" of elevator and tracks, if this be in fact but an aggregation, or wanting in invention.

Therefore I do not see how a decision in which the validity of this patent was not considered, of a court without jurisdiction to consider it, in a suit founded on a contract merely, can be "controlling" here.

If this Illinois case shows anything, it is this: that there was one case of use of Richards' *process*, if it be his, and not of the *apparatus* here patented. For the Court will note (Appellant's brief, p. 17) that the grain was shovelled direct from car to hopper, the elevator being omitted. Yet this elevator is an element of both claims in the patent here. Consequently this case is not in point. Anyway, "*extensive* use is not important where the invention is not patentable." Mr. Chief

Justice Fuller, in Olin *vs.* Timken, 155 U. S., 141–55. How much less important is *one* use, and that not of the patented invention.

The Lake Shore Railroad Company never admitted the validity of Richards' patent and never, if the Illinois case be any criterion, used the combinations covered by it. On the contrary Mr. Newell, President of that Company, always believed that patent was invalid, and contracted with Richards as with any other warehouse- or transfer-man.

If making a contract under a patent renders it valid, then this Court must have erred when it held the May jail patent invalid on the ground of aggregation. Vast numbers of contracts had been made under that patent, and on the advice of patent lawyers, whereas this Lake Shore contract was never considered by a patent lawyer, nor was the patent so considered before the contract was made.

Then as to the act of the Illinois Legislature.

No act of that Legislature could make a patent valid, even if intended for that purpose.

This act was not. It does not pretend to say there is any patentable combination between an elevator building, its contents and two railroad tracks, or that there was any invention in Richards "combinations." Nor does it describe Richards apparatus, any more than any other well-known transfer apparatus. It only mentions specifically "covered hopper-scales," which counsel admits, on page 22 of his brief, were not invented by Richards.

Why, it might as well be contended that the Interstate Commerce Law, which provided that all cars engaged in interstate commerce should be equipped with automatic couplers, thereby made valid any or all patents on such couplers.

Counsel says Judge Blodgett rendered no opinion. This is a mistake. The opinion of that learned judge—of known ability in patent cases—though, of course, not "controlling,"

is yet entitled to more than its usual weight, since in it he sets aside an order made, as Mr. Offield says, "after careful and patient hearing," in order to hold this patent void. This shows how carefully he considered the case, and his reasoning seems to me unanswerable and his conclusion right.

I trust the Court will pardon this supplemental brief, which is

Respectfully submitted,

GEORGE S. PAYSON,

Counsel for Appellees.

158-303

CERTIFICATE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1894

No. 943

ELIZABETH CLEUGH Claimant of the Steamship BEACONSFIELD and WILLIAM LIBBY Surety

Appellants

vs.

ALBERT W. SANBERN

Libellant-Appellee

ON A CERTIFICATE FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

FILED MARCH 14TH 1895

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United States Circuit Court of Appeals, 1

FOR THE SECOND CIRCUIT.

ALBERT W. SANBERN,
Libellant, Appellee,

AGAINST

The Steamship "BEACONSFIELD," ELIZABETH CLEUGH,
Claimant, Appellant, 2

AND

WILLIAM LIBBEY,
Surety, Appellant.

3

A decree in favor of the libellant in this cause having been made in the Circuit Court of the United States for the Southern District of New York, and appeals therefrom having been severally taken by Elizabeth Cleugh, claimant of the *Beaconsfield*, and by William Libbey, her surety, to this Court, and the cause having come on for final hearing, certain questions of law arose, concerning which this Court desires the instruction of the Supreme Court of the 4
United States for its proper decision.

The facts, out of which the questions arose, are as follows :

5

Statement of Facts.

On the 21st of December, 1886, John Lucas Cotton, master, and George Cleugh, owner of the *Beaconsfield*, filed a libel in the District Court of the United States for the Southern District of New York, which was subsequently amended, in which, as bailees of cargo on board the *Beaconsfield*, they sought to recover from the steamship *Brit-*
6 *annia* the sum of $45,000 for damages sustained by the cargo in consequence of the collision between the *Beaconsfield* and the *Brittannia*, which occurred in the Harbor of New York, November 19, 1886. A copy of the said amended libel is hereto annexed, marked Exhibit A, and made part hereof.

In the said amended libel, after showing that the vessel was in all respects seaworthy and properly manned and equipped, and stating the facts leading up to the collision, it alleged as follows:

7 "FIFTH.—That the said collision was not caused by nor owing to any negligence or default on the part of your libellants, nor of the master, officers and crew of the *Beaconsfield*, but was caused solely by the negligence and default and improper navigation of those in charge of said steamship *Britannia*" (in certain particulars specified).

On Jannary 7, 1887, the Compagnie Francaise de Navigation á Vapeur filed its answer to the said amended libel, alleging, amongst other things, that the
8 collision was caused or contributed to through certain specified faults on the part of the *Beaconsfield*, one of which was that she "did not keep on her speed as she should have done" (fol. 38).

A copy of the said answer is hereto annexed, marked Exhibit B, and made part hereof.

On the 7th of January, 1887, the amended petition of the Compagnie Francaise was filed in the suit of

John Lucas Cotton and George Cleugh, against the *Britannia*, setting forth alleged faults on the part of the *Beaconsfield*, contributing to the collision, and praying that process issue against the *Beaconsfield*, to the end that she be proceeded against in the same suit for the damages alleged in the libel of Cotton and Cleugh against the *Britannia*. 9

A copy of the said amended petition is hereto annexed, marked Exhibit C, and made part hereof.

The *Beaconsfield* was arrested under process issued pursuant to the said petition, and to effect her release, a claim was thereupon filed by George Cleugh, as owner of the *Beaconsfield*, for her redelivery to him, and a stipulation for value to obtain the release of the *Beaconsfield* from the said process was filed on January 10, 1887, with William Libbey and George C. Magoun, as sureties. 10

A copy of the said stipulation for value is hereto annexed, marked Exhibit D, and made part hereof.

George C. Magoun, one of the sureties, died before the entry of the final decree here appealed from. 11

The answer of George Cleugh, owner and claimant of the *Beaconsfield*, to the amended petition of the Compagnie Francaise was filed February 7, 1887, denying the averments of the petition, and excepting to the jurisdiction of the Court to enforce any liability against the steamship *Beaconsfield*, by reason of the proceedings taken by the petitioner.

A copy of the said answer is herto annexed, marked Exhibit E, and made part hereof.

On the 4th of March, 1887, John Lucas Cotton and George Cleugh, libellants, also answered the said amended petition of the Compagnie Francaise, denying the specifications of fault alleged against the *Beaconsfield* therein, and averring that the collision was brought about by specified faults on the part of the *Britannia*. In two parts of their answer, they specifically deny any fault on the part of the *Beaconsfield*. 12

13 "They deny that there was any fault or negligence in the steamer *Beaconsfield* contributing to or causing the said collision. That the said collision was not caused by, nor owing, to any negligence or default on the part of your libellants, nor of the master, officers and crew of the *Beaconsfield*."

A copy of said Answer is hereto annexed, marked Exhibit F, and made part hereof.

George Cleugh, claimant of the *Beaconsfield*, omitted to answer the amended libel of John Lucas
14 Cotton and George Cleugh against the *Britannia*.

The cause came on to be tried, with certain cross libels, by the owners of the *Britannia* and *Beaconsfield* against the said vessels respectively, for damages sustained to the hulls of the vessels in the collision, and the decision of Judge Brown holding both vessels in fault was filed January 5, 1887. It is reported in *34 Fed. Rep., 546*.

The final decree of the District Court was entered by Judge Benedict on July 9, 1889, in favor of John
15 Lucas Cotton and George Cleugh, libellants, against the steamship *Britannia* and the steamship *Beaconsfield*, in the sum of $50,249.26. Each vessel was condemned in a moiety of said sum, amounting to $25,124.63.

A copy of the said final decree is hereto annexed, marked Exhibit G, and made part hereof.

Cross appeals were taken to the Circuit Court by George Cleugh, claimant of the *Beaconsfield*, and the Compagnie Francaise, claimant of the *Britannia*, of which copies are annexed, marked Exhibits H and I,
16 and made part hereof.

Pending the said appeals, and on October 3, 1890, an order was entered in the Circuit Court, substituting Elizabeth Cleugh as claimant of the *Beaconsfield*, in place of George Cleugh, deceased, continuing the libel originally filed in the names of John Lucas Cotton and George Cleugh against the *Britannia*, in the name of John Lucas Cotton alone.

The appeals to the Circuit Court came on to be 17
heard with the cross appeals of the owners of the respective vessels in said cross suits for damages sustained to the hulls in the collision. The decrees below were reversed, and a decree was entered, holding, the *Britannia* solely in fault for the collision. Judge Lacombe s findings, conclusions and opinion are reported in *42 Fed. Rep., 67*, and *43 Fed. Rep., 96*.

The findings of fact and conclusions of law, filed in the Circuit Court, are entitled in all the cases. The fourth conclusion of law was: "That those in charge 18
of the *Beaconsfield* were free from fault in the premises."

A copy of the final decree entered in the Circuit Court is hereto annexed, marked Exhibit J, and made part thereof.

This decree was entered in the name of John Lucas Cotton as libellant alone.

From this decree the Compagnie Francaise appealed to the Supreme Court of the United States October 8, 1890. 19

A copy of their said appeal is hereto annexed, marked Exhibit K, and made part hereof.

John Lucas Cotton, libellant, did not appeal from the decree of the Circuit Court.

The appeal of the Compagnie Francaise from the said decree was heard at October Term, 1893, in the Supreme Court of the United States with the appeals of the *Britannia* from the decree dismissing her libel against the *Beaconsfield*, for damage sustained to the hull, and from the decree sustaining the libel of the 20
Beaconsfield against her for like damage sustained in the collision.

The decision of the Supreme Court was entitled in all the cases, and is to be found reported in *153 U. S., 130*.

The act of reversing the engines of the *Beaconsfield* full speed astern, until her headway was lost, and then

21 stopping the engines, alluded to in the opinion of the Supreme Court, was admitted in the amended libel of Cotton and Cleugh to have been the personal act of John Lucas Cotton, master of the *Beaconsfield*.

The mandate of the Supreme Court in this case was filed in the office of the Clerk of the Circuit Court May 19, 1894. It directed that:

"The decree of the Circuit Court in this cause be and the same is hereby reversed, with costs, in this Court against Elizabeth Cleugh, executrix, only." And
22 further "Ordered: That this cause be and the same is hereby remanded to the said Circuit Court, with directions to enter a decree in accordance with the opinion of this Court"; and that "further proceedings be had in said cause in conformity with the opinion and decree of this Court, as according to right and justice and the laws of the United States ought to be had, the said appeal notwithstanding."

A copy of the said mandate is hereto annexed, marked Exhibit L, and made part hereof.

On the further proceedings so ordered, the affidavit
23 of George A. Black, Proctor for Elizabeth Cleugh, was filed, showing that he received a cable on May 25, 1894, which he believes came from the claimant and the then libellant, and by their authority, as follows:

"To George A. Black, 71 Wall street, N. Y. You must not consent to any decree in our names, except against *Britannia* for half damages. We only agreed to be libellants as bailees of cargo against *Britannia;* we forbid our names being used for any decree against *Beaconsfield* for loss of cargo. Please do needful to
24 give effect to this. (Signed) Cleugh, Cotton."

At this stage of the proceedings, the sureties specially appeared by counsel for the protection of their interests, and were informed that a cable identical with the one addressed to George A. Black was addressed by the libellant Cotton to his own counsel, Sydney Chubb, Esq. (the cable was also signed by Cleugh.)

Upon a preliminary argument before the Court on 25
the settlement of the decree the proctor for the sureties read this cable in open court in the presence of Mr. Chubb, stating that he had been informed that it had been sent to Mr. Chubb by his client, Cotton, and subsequently embodied the text of the cable in an affidavit with the sources of his information. Mr. Chubb did not deny in court that he had received the cable in the words given, nor did he controvert the affidavit.

A copy of this affidavit is hereto annexed, marked Exhibit M, and made part hereof. 26

The libellant then moved, on June 1, 1894, that the libel be amended by substituting the name of Albert W. Sanbern, the owner of the cargo damaged on board the *Beaconsfield*, as sole libellant herein, in the place and stead of John Lucas Cotton, and for the entry of the final decree in the name of said Sanbern.

This motion was opposed both by Elizabeth Cleugh, claimant, and by William Libbey, surety, but was granted by an order dated June 4, 1894, filed in the office of the clerk June 7, 1894, and on the same day, 27
against the objection of the claimant of the *Beaconsfield* that Cotton had not appealed from the former decree holding the *Britannia* alone in fault, and against the objection of the surety that he had been discharged by the said amendments, a final decree was entered against the *Britannia* and the *Beaconsfield* for the sum of $63,053.28, condemning each vessel in a moiety of the said sum, amounting to $31,526.64.

Copies of the said order and of the said final decree are hereto annexed, marked Exhibits N and O, and 28
made part hereof.

This decree ordered the sureties, on the claimant's stipulations for value and costs, to show cause within four days why execution should not issue against their goods, chattels and lands for the amount of the said stipulations.

The sureties for the *Beaconsfield* showed cause on June 11.

29 Their return alleged :

(1.) That the original and amended libels were filed by John Lucas Cotton, master, and George Cleugh, owner, of the *Beaconsfield*, as bailees of cargo, and George Cleugh was claimant of the *Beaconsfield*.

(2.) That there was no allegation of fault on the part of the *Beaconsfield* in the libel or amended libel, or in the libellants' answer to the amended petition of the Compagnie Francaise.

30

(3.) That the question of liability between the *Beaconsfield* and the libellants was never actually litigated, there being no allegation in any part of the pleadings filed by libellants that the *Beaconsfield* was in fault, and the bills of lading under which the goods were carried never having been interposed by way of defense.

(4.) That at the time the sureties entered into their stipulation, John Lucas Cotton and George Cleugh
31 were parties libellant and continued to be such until after the final decree in the District Court.

(5.) That the libel was subsequently, and on October 3, 1890, amended by dropping the name of George Cleugh, who had died, and continuing the libel in the name of John Lucas Cotton alone, instead of in the names of said Cotton and Elizabeth Cleugh, as administratrix of the co-libellant, although she was substituted in George Cleugh's place as claimant.

32

(6.) That after the mandate was handed down the libel was again amended by substituting the name of Albert W. Sanbern, owner of the cargo, in the place and stead of John Lucas Cotton, one of the bailees.

(7.) They also referred to the proceedings previously had in this cause, including the proceedings in opposi-

tion to the entry of the final decree against the *Beaconsfield*, and the application to substitute Sanbern in place of Cotton, as libellant. 33

By reason of the matters aforesaid, the sole surviving surety, William Libbey, claimed to be exonerated from all liability on or by reason of the said stipulation for value dated January 10, 1887.

To the cause thus shown by the surety the libellant filed no reply.

On June 12, 1894, against the said objections on the part of the surety, an order was entered directing judgment and execution against William Libbey, under his said stipulation, in the sum of $23,000, and judgment was entered against him for the amount on the same day. 34

Copies of the said order and of said judgment are hereto annexed, marked Exhibits P and Q, and made part hereof.

Thereupon Elizabeth Cleugh, claimant of the *Beaconsfield*, appealed from the decree against the steamer, and William Libbey, surety, appealed from the decree, and from the order for judgment, and judgment entered against him, and assigned separate errors, bringing up the matters aforesaid for review by this Court. 35

The final decree appealed from by these appellants was satisfied as against the *Britannia*, on payment of a moiety of the damages.

Upon these facts this Court desires instruction upon the questions of law, for the proper decision of said cause, namely: 36

1. Whether in entering said final decree, condemning each vessel in a moiety of said damages, the Circuit Court obeyed the mandate of the Supreme Court.

2. Whether, upon the above statement of facts, the libellant, Albert W. Sanbern, was entitled to a final

37 decree condemning the steamship *Beaconsfield*, her engines, tackle, apparel and furniture, in a moiety of the cargo damage, amounting to $31,526.64, as adjudged in the said final decree.

3. Whether, upon the above statement of facts, the libellant, Albert W. Sanbern, was entitled to judgment against William Libbey, surety, in the sum of $23,000, as directed by the said order of June 12, 1894, and as adjudged in the said judgment entered pursuant to the
38 said order, and filed June 12, 1894.

To that end this Court certifies these questions to the Supreme Court.

WM. J. WALLACE,
N. SHIPMAN,
Judges of the U. S. Circuit Court of Appeals, Second Circuit.

39

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41

Exhibit A.

To the Honorable ADDISON BROWN, Judge of the District Court of the United States for the Southern District of New York:

The amended libel and complaint of John L. Cotton, master, and George Cleugh, owner of the steamship *Beaconsfield* against the steamship *Britannia*, her engines, tackle, apparel and furniture, and against all persons intervening for their interests therein in a cause 42
of collision, civil and maritime, articulately propounds and alleges as follows:

FIRST.—That at all the times hereinafter mentioned your libellant, Cotton, was the master, and your libellant, Cleugh, the owner of the steamship *Beaconsfield*, and that at said times the said steamship was in all respects tight, staunch and seaworthy.

SECOND.—That on or before the 19th day of November the said steamship *Beaconsfield*, at the port of New 43
York, was loaded with a full cargo of grain, the property of persons whose names are not known to your libellants, under an agreement made by your libellants for the safe carriage thereof in said steamship to the port of Aberdeen, in Scotland, and for which your libellant had executed and delivered bills of lading to the shippers.

THIRD.—That on the 19th day of November, 1886, at about nine o'clock in the forenoon, the said steam- 44
ship *Beaconsfield* backed out from Dow's Stores, Brooklyn, and swung around to the northward and proceeded on her said voyage, heading well over to the New York shore so as to pass between it and Governor's Island, the wind then blowing hard from the west. That the said steamship was well and sufficiently officered, manned and equipped, and

45 had a licensed Sandy Hook pilot aboard and look-
outs properly placed and attentive to their duties.
That when the said vessel, going slowly and cau-
tiously, at a speed of less than four knots per hour,
had reached a point between Diamond Reef and Piers
No. 3 and 4 on the New York shore, the tide being
then the last of the ebb, and the steamer then heading
between W. by N. and W. N. W., the steamship
Britannia was seen by those in charge of the *Beacons-
field* coming up the harbor from sea at full speed, being
46 then a little below Castle William and close to the
eastern edge of the channel and distant from the *Bea-
consfield* about a mile. The *Beaconsfield* thereupon
sounded a single blast with her whistle as a signal to
the *Britannia* that the *Beaconsfield* would keep to
starboard, which signal was understood and accepted
by the *Britannia* and answered with a single blast on
her own whistle, whereupon the *Beaconsfield* ported
her helm and kept as close to the New York shore as
was prudent. That those in charge of the *Beacons-
47 field*, while still proceeding at a speed of less than four
miles an hour on her aforesaid course, saw that the
Britannia instead of keeping to her own starboard in
accordance with the aforesaid whistles, began to swing
to port and head further across the *Beaconsfield's*
bows. The *Beaconsfield* thereupon sounded a second
single blast with her whistle which was not answered
and finding that the *Britannia* did not appear to
slacken her speed and that she was approaching the
said *Beaconsfield*, the master of the *Beaconsfield*
48 stopped and reversed his engines full speed astern until
her headway was lost when the engines were stopped.
That immediately thereafter the *Britannia* ran vio-
lently into the *Beaconsfield* which was then heading a
little north of west, the *Britannia's* stem striking the
Beaconsfield on her port side, nearly amidships, at an
angle of about eighty degrees from the *Beaconsfield's*
bow, and making a hole about fifteen feet in length by

five in breadth, and said *Beaconsfield* was then nearly abreast of Pier 1. That both vessels backed after the collision and the *Beaconsfield*, with the assistance of tug boats, then proceeded towards the New Jersey shore in a sinking state, and sank in 18 feet of water just before reaching a pier. 49

FOURTH.—That by reason of the said collision the said cargo became wetted and soaked with salt water and its market value thereby nearly entirely lost, the exact amount of the damage thereto not being now known nor being capable of being known, but being at least the sum of forty-five thousand dollars ($45,000). 50

FIFTH.—That the said collision was not caused by nor owing to any negligence or default on the part of your libellants nor of the master, officers and crew of the *Beaconsfield*, but was caused solely by the negligence and default and improper navigation of those in charge of the said steamship *Britannia*, in that being bound into the East River from sea with the tide the last of the ebb and the wind blowing hard from the westward, the *Britannia* did not keep more to the westward in coming up the upper bay so as to make an easier turn into the said river and strike the East River tide bow on or nearly so; in that the *Britannia* did not seasonably stop and reverse her engines; in that having the *Beaconsfield* on her starboard side she did not keep out of her way; in that seeing the *Beaconsfield* coming down the river with the ebb tide she did not keep out of her way; in that seeing the *Beaconsfield* was as close to the west side of the channel as was prudent the *Britannia* did not keep out of her way; in that having answered the *Beaconsfield's* one blast with one blast she did not take timely measures to avoid her and did not keep to the starboard and 51 52

53 pass her port to port; in that after having sounded a single blast with her whistle the *Britannia* was allowed to swing to port; in that the *Britannia* made no answer to the *Beaconsfield's* second signal of one blast; in that the *Britannia* proceeded at too high a rate of speed; in that they did not seasonably slow the *Britannia's* engines; in that they did not have a lookout properly placed and attentive to his duty.

SIXTH.—That all and singular the premises are true
54 and within the admiralty jurisdiction of this Court, and the said steamship is now within this port of New York, and about to go to sea and to foreign ports.

Wherefore, libellants pray that process in due form of law may issue against the said steamship *Britannia*, her engines, etc., and that all persons interested therein may be cited to appear and answer the matters aforesaid, and that the said steamship *Britannia* may be arrested and condemned and sold to satisfy the
55 damages aforesaid, and that your libellants may have such other and further and different relief in the premises as justice may require.

SIDNEY CHUBB,
Proctor for Libellants,
No. 50 Wall Street,
New York, N. Y.

Southern District of New York, ss.:

56 JOHN LUCAS COTTON, being duly sworn, says: That he is one of the libellants herein and has read the foregoing amended libel and knows the contents thereof, and that the same is true of his own knowledge; that he is the master of the steamship *Beaconsfield*, and as such

the agent and attorney in fact of the libellant Cleugh, who is not now within the United States. 57

JOHN L. COTTON.

Sworn to before me this 21st day of December, 1886.

THOS. J. DELANEY,
[L. S.] Notary Public,
King's County, N. Y.

Cert. filed in N. Y. Co.

58

Exhibit B.

To the Honorable ADDISON BROWN, Judge of the District Court of the United States for the Southern District of New York.

The answer of the Compagnie Française de Navigation à Vapeur Cyprien Fabre et Cie, claimants and owner of the steamship *Britannia*, to the amended libel of John L. Cotton and George Cleugh against said steamer, alleges as follows : 59

FIRST.—They have no knowledge as to the allegations of the first and second articles of said libel, and leave the libellants to their proof thereof.

SECOND.—They have no knowledge as to the allegations in the third article of said libel before the allegation as to the seeing of the *Britannia*, and leave the libellants to their proof thereof. 60

And as to all the remaining allegations in said third article, they allege that they are in many respects erroneous and untrue, and that the truth in regard to them is as is set forth in the sixth article of this answer, and they deny each and every allegation in the third article of the libel, which does not conform to the sixth article of this answer.

61 THIRD.—They admit the allegations of the fourth article of the libel, except as to the amount of the damages, which they deny.

FOURTH.—They deny each and every allegation of the fifth article of the libel.

FIFTH.—They admit the sixth article of the libel, except that the premises are true, which they deny.

SIXTH.—They allege, on information and belief, that
62 the facts and circumstances attending said collision are as follows, viz.: On the 19th of November, 1886, the said steamer *Britannia* was coming in from sea. She came slowly up the bay at a speed of about four or four and a half knots an hour, and was bound into the East River to her usual pier in Brooklyn. The wind was blowing a gale from the westward, and the tide was the last of the ebb. As she was passing up the channel to the westward of Governor's Island, she was compelled to port her wheel to pass under the stern of
63 a tug towing a scow, which came out of the East River passed across her bows, and shortly after such porting she touched bottom, which made it necessary to put her engines at full speed ahead for a very brief space until she was clear of the bottom, where her engines were again put at half speed as before.

The claimants, according to information which has been obtained since the filing of the second amended libel in the suit brought by the claimants against the steamer *Beaconsfield*, allege that when the *Britannia*
64 so touched bottom she was about north of Castle William on Governor's Island and within about two lengths of the shore.

Some time before the *Britannia* touched bottom, and when she was not far from the middle of the channel westward from Governor's Island, and was heading about for the Battery, the *Beaconsfied* was seen by the captain and pilot of the *Britannia*. She was seen as soon

as she became visible by Castle William, and was then distant nearly a mile, and was apparently about off South Ferry or a little above it, and about in the middle of the channel between Governor's Island and New York, and was bound to the westward, but her exact course the claimants do not know. 65

The *Beaconsfield* was seen about the time when the helm of the *Britannia* was first ported, and, as the claimants believe, the *Britannia* had begun to swing to starboard from her course up the channel, which had been about northeast by north, and the *Beaconsfield* bore about three or four points on her starboard bow. 66

In such circumstances it became the duty of the *Britannia* to port to her wheel and pass between the *Beaconsfield* and Governor's Island, and it became the duty of the *Beaconsfield* to port her wheel and keep on towards the New Jersey shore, each vessel giving the signal of one whistle. Accordingly, the proper signal of one whistle was given by the *Britannia* which was then heading about northeast by east. This signal was afterwards repeated by her twice, but no signal whatever was given by the *Beaconsfield*. 67

The wheel of the *Britannia* was put hard-aport. This was the necessary movement of the wheel to turn the *Britannia* into the East River around Governor's Island, and was made in order to clear the tug and scow, and just as soon as the *Britannia* got up far enough to turn with safety around Governor's Island, was continued in order to clear the *Beaconsfield*, and was not changed from that time till the anchor was dropped, just before the collision; and she swung under that port helm several points to starboard from the heading when the *Beaconsfield* was seen. No answering whistle was given by the *Beaconsfield*. The *Beaconsfield*, instead of porting her wheel and keeping on, apparently made no change of direction and stopped her headway; whereas, if she had ported her wheel 68

69 and kept on at a slow rate of speed, or even if she had kept on without porting, she would have passed all clear to the westward, and much more so if her engines had been put at full speed ahead as she should have been.

As soon as it became apparent to those in command of the *Britannia* that there was any danger of collision, the engines of the *Britannia* were at once stopped and reversed, and they were backed for about four minutes before the collision, and also shortly before it,
70 when the vessels were about from a hundred to two hundred feet apart, her anchor was dropped, which was all that the *Britannia* could do to avoid the collision. Up till the dropping of the anchor the *Britannia* had continued swinging to starboard.

The *Britannia* was moving ahead very slowly at the time of the collision, her reversed engines not having quite stopped her. Her stem came in collision with the port side of the *Beaconsfield* about amidships, doing serious damage to the *Britannia*. And at the
71 time of the collision the *Britannia* was heading about east, and the *Beaconsfield* was heading nearly northwest.

The place of collision in the river was to the southward of the middle of the channel, between Governor's Island and New York, and a short distance below the South Ferry.

Said collision occurred without any fault or negligence on the part of the owner, master and crew, or pilot of said steamship *Britannia*, or their agents or servants;
72 and was caused wholly through the fault, carelessness and negligence of those on board of and in charge of said steamship *Beaconsfield*, in that, among other things, she had no proper lookout, and did not keep out of the way of the *Britannia;* and in that she did not see the *Britannia* as soon as she should have done, and in time to have avoided the *Britannia*, and did not change her course or keep on her speed as she should

have done, and failed to give proper signals or to 73
answer the signals of the *Britannia*, which were properly given; and in that she was otherwise improperly and negligently and recklessly navigated.

Wherefore, they pray that the libel may be dismissed with costs.

JAS. W. ELWELL,
Agent.

Sworn to before me this 7th day of January, 1887.

L. B. LEVENS, 74
[SEAL.] Notary Public,
Kings Co.

Cert. filed in N. Y. Co.

BENEDICT, TAFT & BENEDICT,
Claimant's Proctors.

Exhibit C.

75

To the Honorable ADDISON BROWN, Judge of the District Court of the United States for the Southern District of New York:

The amended petition of the Compagnie Francaise de Navigation à Vapeur, Cyprien Fabre et Cie, claimants, of the steamship *Britannia*, in the suit of J. L. Cotton and George Cleugh against said steamship in a cause of collision, respectfully shows to this Court:

FIRST.—That on the 29th of November, 1886, a 76
libel was filed in this Court by the said J. L. Cotton and George Cleugh against the steamship *Britannia*, claiming to recover forty-five thousand dollars for the damages sustained by the cargo of the steamship *Beaconsfield* by reason of a collision between the *Beaconsfield* and the *Britannia*. That your petitioner duly appeared in said action as claimant of the steamship

77 *Britannia*, and gave security for the discharge of the said vessel, which had been seized under process issued on said libel, and she was accordingly discharged from such seizure.

SECOND.—And the petitioner alleges that the collision in question occurred in the harbor of New York on the 19th day of November, 1886; that the *Britannia* was coming in from sea, and the *Beaconsfield* was bound to sea; and that there was fault or negligence in the
78 steamer *Beaconsfield* contributing to said collision or solely causing the same; that the particulars thereof are as follows, as they are informed and believe, viz.: On the 19th of November, 1886, the said steamer *Britannia* was coming in from sea. She came slowly up the bay at a speed of about four or four and a half knots an hour, and was bound into the East River to her usual pier in Brooklyn. The wind was blowing at a gale from the westward, and the tide was the last of the ebb. As she was pass-
79 ing up the channel to the westward of Governor's Island she was compelled to port her wheel to pass under the stern of a tug towing a scow, which came out of the East River and passed across her bows, and shortly after such porting she touched bottom, which made it necessary to put her engines at full speed ahead for a very brief space until she was clear of the bottom, when her engines were again put at half speed as before.

The petitioner, according to information which has
80 been obtained since the filing of the second amended libel in the suit brought by your petitioner against the steamer *Beaconsfield*, alleges that when the *Britannia* so touched bottom she was about north of Castle William on Governor's Island, and within about two lengths of the shore.

Some time before the *Britannia* touched bottom, and when she was not far from the middle of the chan-

nel westward from Governor's Island, and was heading about for the Battery, the *Beaconsfield* was seen by the captain and pilot of the *Britannia*. She was seen as soon as she became visible by Castle William and was then distant nearly a mile, and was apparently about off South Ferry or a little above it, and about in the middle of the channel between Governor's Island and New York and was bound to the westward, but her exact course the petitioner does not know. 81

The *Beaconsfield* was seen about the time when the helm of the *Britannia* was first ported, and as the petitioner believes, the *Britannia* had begun to swing to starboard from her course up the channel which had been about northeast by north, the *Beaconsfield* bore about three or four points on her starboard bow. 82

In such circumstances it became the duty of the *Britannia* to port her wheel and pass between the *Beaconsfield* and Governor's Island, and it became the duty of the *Beaconsfield* to port her wheel and keep on towards the New Jersey shore, each vessel giving the signal of one whistle. Accordingly, the proper signal of one whistle was given by the *Britannia*, which was then heading about northeast by east. This signal was afterwards repeated by her twice; but no signal whatever was given by the *Beaconsfield*. 83

The wheel of the *Britannia* was put hard-aport. This was the necessary movement of the wheel to turn the *Britannia* into the East River around Governor's Island, and was made in order to clear the tug and scow, and just as soon as the *Britannia* got up far enough to turn with safety around Governor's Island was continued in order to clear the *Beaconsfield*, and was not changed from that time till the anchor was dropped, just before the collision; and she swung under that port helm several points to starboard from the heading when the *Beaconsfield* was seen. No answering whistle was given by the *Beaconsfield*. The *Beaconsfield*, instead of porting her wheel and keeping on 84

85 apparently made no change of direction and stopped her headway; whereas, if she had ported her wheel and kept on at a slow rate of speed, or even if she had kept on without porting, she would have passed all clear to the westward, and much more so, if her engines had been put at full speed ahead as they should have been.

As soon as it became apparent to those in command of the *Britannia* that there was any danger of collision, the engines of the *Britannia* were at once
86 stopped and reversed, and they were backed for about four minutes before the collision, and also shortly before it, when the vessels were about from a hundred to two hundred feet apart, her anchor was dropped, which was all that the *Britannia* could do to avoid the collision. Up till the dropping of the anchor the *Britannia* had continued swinging to starboard.

The *Britannia* was moving ahead very slowly at the time of the collision, her reversed engines not having quite stopped her. Her stem came in collision with the
87 port side of the *Beaconsfield* about amidships, doing serious damage to the *Britannia*. And at the time of the collision the *Britannia* was heading about east and the *Beaconsfield* was heading nearly northwest.

The place of collision in the river was to the southward of the middle of the channel between Governor's Island and New York, and a short distance below the South Ferry.

Said collision occurred without any fault or negligence on the part of the owner, master and crew, or
88 pilot of said steamship *Britannia*, or their agents or servants; and was caused wholly through the fault, carelessness and negligence of those on board of and in charge of said steamship *Beaconsfield*, in that, among other things, she had no proper lookout, and did not keep out of the way of the *Britannia*, and in that she did not see the *Britannia* as soon as she should have done, and in time to have avoided the *Britannia*, and

did not change her course or keep on her speed as she should have done, and failed to give proper signals or to answer the signals of the *Britannia* which were properly given; and in that she was otherwise improperly and negligently and recklessly navigated. 89

THIRD.—And your petitioner avers that the said steamer *Beaconsfield* ought to be proceeded against in the same suit for said damage.

Your petitioner therefore prays that process may issue against the steamer *Beaconsfield* to the end that she may be proceeded against in the same suit for such damage, and that she may be seized to answer the said damage, and that this Court would otherwise administer right and justice in the premises. 90

JAS. W. ELWELL,
Agent.

Sworn to before me, this 7th day of January, 1887.

L. B. LEVENS,
[SEAL.] Notary Public, 91
Kings Co.

Cert. filed in N. Y. Co.

Exhibit D.

DISTRICT COURT OF THE UNITED STATES

FOR THE SOUTHERN DISTRICT OF NEW YORK.

In Admiralty. 92

Filed the 10th day of Jan'y, 1887.

STIPULATION FOR VALUE.

Entered into pursuant to the rules and practices of this Court.

Whereas, a petition was filed on the day of December, in the year of our Lord one thousand eight

93 hundred and eighty-six, by the Compagnie Francaise de Navigation a Vapeur Cyprien Fabre & Cie, claimants of the steamship *Britannia*, praying that process issue pursuant to Rule 59 in Admiralty of the Supreme Court of the United States against the steamship *Beaconsfield*, her engines, &c., in a suit by John L. Cotton, libellant, against the said steamship *Britannia*, for the reasons and causes in the said petition mentioned; and whereas the said steamship *Beaconsfield*, her engines, &c., is in the custody of the Marshal under the process
94 issued in pursuance of the prayer of the said petition; and whereas a claim has been filed by J. L. Cotton, master of said steamship *Beaconsfield*, for George Cleugh, the owner thereof, and the Court having ordered that the said steamship *Beaconsfield* be released from custody upon the claimant thereof filing a stipulation for value in the sum of $23,000, as appears from said order now on file in said Court; and the parties hereto, hereby consenting and agreeing, that in case of default or contumacy on the part of the claimant or
95 his sureties, execution for the above amount may issue against their goods, chattels, and lands.

Now, Therefore, the condition of the stipulation is such, that if the stipulator undersigned shall at any time, upon the interlocutory or final order or decree of the said District Court, or of any appellate court to which the above-named suit may proceed, and upon notice of such order or decree to George A. Black, Esquire, proctor for the claimant of said steamship *Beaconsfield*, abide by and pay the money awarded
96 by the final decree rendered by the Court or the appellate court, if any appeal intervene, then this stipu-

lation to be void, otherwise to remain in full force and 97
virtue.

WILLIAM LIBBEY,
GEO. C. MAGOUN.

Taken and acknowledged this 10th day of January, 1887, before me.

W. M. K. OLCOTT,
Notary Public,
N. Y. Co.

Southern District of New York, ss: 98

WILLIAM LIBBEY and GEO. C. MAGOUN, parties to the above stipulation, being duly sworn, do each for himself depose and say that he resides in the Southern District of New York; that he is worth the sum of forty-six thousand dollars over and above all his just debts and liabilities.

WILLIAM LIBBY.
GEO. C. MAGOUN.

Sworn to, this 10th day of January, 1887, before me. 99

W. M. K. OLCOTT.
Notary Public,
[SEAL.] N. Y. Co.

Southern District of New York, ss.:

On the 10th day of January, 1887, before me personally came William Libby and Geo. C. Magoun, to me known and known to me to be the individuals mentioned and described in and who executed the foregoing stipulation and severally acknowledged to me 100
that they executed the same.

W. M. K. OLCOTT,
Notary Public.
[SEAL.] N. Y. Co.

Bond approved as per order of Court.

BENEDICT, TAFT & BENEDICT,
Procts. for *Britannia*.

Recorded this 10th day of January, 1887.

101

Exhibit E.

To the Honorable ADDISON BROWN, Judge of the District Court of the United States for the Southern District of New York.

The answer of George Cleugh, owner and claimant of the steamship *Beaconsfield*, to the amended petition of the Compagnie Francaise de Navigation à Vapeur, Cyprien Fabre *et al.*
102 of Marseilles, claimants of the steamsnip *Britannia* in the suit of John Lucas Cotton and George Cleugh against said steamship in a cause of collision, alleges as follows :

FIRST.—Your claimant admits the allegations of the first article of said amended petition.

SECOND.—Your claimant admits that the collision occurred at tne time set forth in the second article of said petition, but denies that there was fault or negli-
103 gence in the steamship *Beaconsfield* contributing to said collision or causing the same ; your claimant admits that the steamship *Britannia* was coming in from sea, but has no knowledge as to her speed ; your claimant admits that the wind was blowing a gale from the westward and that the tide was running last of the ebb in the North River ; your claimant has no knowledge as to what occurred on the said steamship *Britannia* prior to her coming into view of the *Beaconsfield*, and upon information and belief, claim-
104 ant alleges that no information has been obtained by the said claimant of the said steamship *Britannia* since the filing of their second amended libel in the suit brought by the said claimants of the said steamship *Britannia* against the steamship *Beaconsfield* respecting the place where the *Britannia* touched bottom, which was not and could could not have been known to them at the time when

their first and second libels were filed; your claimant denies that the facts concerning the said collision are truly set forth in said second article of said petition; your claimant has no knowledge as to the time the said *Beaconsfield* was seen by those on the *Britannia* nor whether the *Britannia* touched bottom nor where she touched bottom, nor whether the *Beaconsfield* was seen some time before the *Britannia* touched bottom nor where the said *Beaconsfield* was when seen by those on the *Britannia*, but claimant denies that the *Beaconsfield* was seen as soon as she became visible, and claimant denies that the position where the *Beaconsfield* was first visible from the *Britannia* is correctly set forth in said second article of said petition; your claimant denies that any more than one signal (which claimant alleges was a signal of one whistle) was blown to the said *Beaconsfield* by the said *Britannia*, which signal claimant alleges was an answer to a prior signal of one whistle blown by the said *Beaconsfield*, which signal was repeated by the *Beaconsfield* by blowing again a signal of one whistle, which was not answered by the *Britannia;* and claimant denies that no signals were given by the *Beaconsfield*, and avers that the signals above mentioned were given by the *Beaconsfield;* your claimant has no knowledge as to when the wheel of the *Britannia* was put hard aport nor how long it was kept hard aport, and alleges that it was apparent to those on the *Beaconsfield* that the *Britannia's* head was swung to port after the first whistle was blown by the *Beaconsfield* to the *Britannia*, and the belief existed that such swinging of her head was caused by a starboard wheel on the *Britannia;* and your claimant denies that the *Beaconsfield* made no change of direction, and on the contrary alleges that she ported her wheel and kept heading as close to the New York shore as it was prudent for her to do; and claimant avers that if the *Beaconsfield* had kept on her course she wonld

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109 have violated that rule of navigation which makes it the duty of a vessel when two vessels are approaching on crossing courses so as to involve the risk of collision to slacken her speed or to stop and reverse, which claimant avers was the situation at the time the *Beaconsfield* stopped her engines and headway ; and it is the belief of the claimant that if the *Beaconsfield* had kept on she would have run into the *Britannia* or have been run into by the *Britannia* and sustained thereby greater damage, as the vessels were then approaching
110 each other on crossing courses and were but a short distance apart ; and your claimant denies that the engines of the *Britannia* were stopped and reversed when there was first danger of collision, and denies that said engines were backed for four minutes before the collision, and claimant denies that an anchor was dropped from the *Britannia* at any greater distance from the *Beaconsfield* than between twenty and forty feet ; and your claimant denies that all was done on the *Britannia* that they could do to avoid
111 the said collision, and claimant denies that up to the time of dropping the anchor the *Britannia* continued to swing to starboard and was moving very slowly at the time of the collision ; and claimant avers that the bow of the *Britannia* struck the port side of the *Beaconsfield* about amidships, and denies that there was any serious damage to the *Britannia* and alleges that the *Britannia* was moving at a high rate of speed when she struck the *Beaconsfield* cutting through the plates of her side and her deck, both being of heavy
112 iron ; your claimant denies that at the time of the collision the *Britannia* was heading about E., and the *Beaconsfield* was heading about N. W. and alleges the fact to be that the *Beaconsfield* was heading about W. N. W. and the *Britannia* struck her at an angle of about 80 degrees from the *Beaconsfield's* bow ; and your claimant denies that the place of said collision is truly stated in said second article

of said petition and alleges the same to have been 113
to the north of the middle of the channel between Governor's Island and New York and near the New York shore and about abreast of Pier 1, East River; and your claimant denies all the allegations of fault, carelessness and negligence made against the steamship *Beaconsfield*, and alleges that the facts of said collision are not correctly stated in said second article of said petition.

THIRD. Your claimant denies the third article of said 114
amended petition.

FOURTH. Your claimant excepts to the jurisdiction of the Court to enforce any liability against the said steamship *Beaconsfield* by reason of the proceedings taken herein by the said petitioner.

FIFTH. Your claimant alleges that the true facts and circumstances of said collision were as follows:

That the steamship *Beaconsfield*, being then staunch, 115
well manned and equipped and in all respects seaworthy, set sail on the 19th day of November, 1886, with a full cargo on board, from the dock near the foot of Pacific street, in the City of Brooklyn, bound on a voyage to Aberdeen; that she started on said voyage about 9 o'clock in the morning in charge of a Sandy Hook pilot, and with the assistance of a tugboat had backed out of said dock where she lay with her stern out; that she got turned around with her head up the East River, and with the tug on the starboard bow 116
proceeded to swing around and get on her course to pass between Diamond Reef and the New York shore, and was proceeding at a speed of between 3 and 4 knots an hour with a competent and attentive lookout properly stationed and her engines properly attended to, the said pilot and her master being on the bridge; that about the time the said steamship had got abreast of Diamond Reef the said tugboat was cast off, and

117 said steamship proceeded slowly at the same rate of speed and had reached a point between Diamond Reef and Piers 3 and 4, East River, when the steamship *Britannia* was seen by those on board the said steamship *Beaconsfield* off her port bow, and bore 4 or 5 points forward of abeam, and at that time distant about one mile from the *Beaconsfield* and close in towards Governor's Island, and then heading to pass ahead of the *Beaconsfield ;* that the said *Beaconsfield* thereupon blew one whistle to the said steamship *Britannia* and
118 received an answer of one whistle, and ported her helm so that she drew in towards the docks on the New York shore, and continued at the same rate of speed ; that the said steamship *Britannia* was moving at a high rate of speed, apparently changing her course to the westward as she drew nearer to the *Beaconsfield*, which thereupon blew another single blast and put her helm hard-aport, and perceiving that the *Britannia* continued to approach her without slowing her speed, said *Beaconsfield* stopped and reversed her engines until her
119 headway was stopped, but the *Britannia*, continuing on her course, ran into and struck the *Beaconsfield* about amidships on her port side bearing a little forward of abeam and cut a large hole in her side, above and below the water line, thereby damaging her greatly ; that the said *Beaconsfield* was heading about W. N. W. when she was struck by the steamship *Britannia*, and was close to the docks on the New York shore, about abreast of Pier 1, East River ; that the day was clear and bright, and there was nothing in
120 the way of the steamship *Britannia*, the tide was running ebb in the North River and nearly low water ebb in the East River.

Wherefore, claimant prays that the petition against the said steamship *Beaconsfield* may be dismissed with costs.

GEO. A. BLACK,
Proctor for Claimant,
71 Wall St., N. Y.

Southern District of New York, ss. : 121

THOMAS C. CHUBB, being duly sworn, says that he is the agent of George Cleugh, the claimant above named; that the foregoing answer is true of his own knowledge, except as to the matters therein stated upon information and belief, and as to those matters he believes to be true; that the reason why this verification is not made by claimant is that he is not within the United States.

(Sgd.) T. C. CHUBB. 122

Sworn to before me this 7th day of February, 1887.

LAWRENCE KNEELAND,
[SEAL.] Notary Public,
Kings Co.

Cert. filed in N. Y. Co.

Exhibit F.

123

To the Honorable ADDISON BROWN, Judge of the District Court of the United States for the Southern District of New York.

The answer of John Lucas Cotton and George Cleugh, libellants to the amended petition of the Compagnie Francaise de Navigation à Vapeur Cyprien Fabre et Cie, claimants herein, articulately propounds and alleges as follows:

FIRST.—They admit the matters alleged in article first of said amended petition. 124

SECOND.—They admit that the collision in question occured in the harbor of New York on the 19th day of November, 1886, and that the *Britannia* was coming in from sea and the *Beaconsfield* bound out. They deny that there was any fault or negligence in the steamer *Beaconsfield* contributing to or causing the

125 said collision. They deny the matters alleged in the second article of said petition from the word "viz." to the words "four points on her starboard bow." They admit that it became the duty of each vessel to port her helm and give a signal of one whistle. They admit that a signal of one whistle was blown by the *Britannia* in answer to one whistle from the *Beaconsfield*. They deny that this signal was afterwards repeated by the *Britannia*, and they deny that no signal was given by the *Beaconsfield*. They deny the re-
126 maining allegations of article second and of said amended petition.

THIRD.—And further answering the said amended petition, your libellants aver that the particulars of the said collision are as follows :

That on the 19th day of November, 1886, at about nine o'clock in the forenoon, the said steamship *Beaconsfield* backed out from Dow's Stores, Brooklyn, and swung around to the northward and proceeded on her
127 said voyage, heading well over to the New York shore, so as to pass between it and Governor's Island, the wind then blowing hard from the west. That the said steamship was well and sufficiently officered, manned and equipped, and had a licensed Sandy Hook pilot aboard and lookouts properly placed and attentive to their duties. That when the said vessel, going slowly and cautiously at a speed of less than four knots per hour, had reached a point between Diamond's Reef and Piers Nos. 3 and 4 on the New York shore,
128 the tide being then the last of the ebb, and the steamer then heading between W. by N. and W. N. W., the steamship *Britannia* was seen by those in charge of the *Beaconsfield* coming up the harbor from sea at full speed, being then close to the eastern edge of the channel and distant from the *Beaconsfield* about a mile. The *Beaconsfield* thereupon sounded a single blast with her whistle as a

signal to the *Britannia* that the *Beaconsfield* 129
would keep to starboard, which signal was understood and accepted by the *Britannia* and answered with a single blast on her own whistle, whereupon the *Beaconsfield* ported her helm and kept as close to the New York shore as was prudent. That those in charge of the *Beaconsfield*, while still proceeding at a speed of less than four miles an hour on her aforesaid course, saw that the *Britannia*, instead of keeping to her own starboard, in accordance with the aforesaid whistles, began to swing to port and head 130
further across the *Beaconsfield's* bow. The *Beaconsfield* thereupon sounded a second single blast with her whistle, which was not answered, and finding that the *Britannia* did not appear to slacken her speed, and that she was approaching the said *Beaconsfield*, the master of the *Beaconsfield* stopped and reversed his engines full speed astern, until her headway was lost, when the engines were stopped. That immediately thereafter the *Britannia* ran violently into the *Beaconsfield*, which was then heading a little north of 131
west, being between west by north and west, northwest, the *Britannia's* stem striking the *Beaconsfield* on her port side, nearly amidships, at an angle of about eighty degrees from the *Beaconsfield's* bow, and making a hole about fifteen feet in length by five in breadth, and said *Beaconsfield* was then nearly abreast of Pier 1.

That both vessels backed after the collision, and the *Beaconsfield*, with the assistance of tugboats, then proceeded towards the New Jersey shore in a sinking 132
state, and sank in eighteen feet of water, just before reaching a pier.

That the said collision was not caused by, nor owing to any negligence or default on the part of your libellants, nor of the master, officers and crew of the *Beaconsfield*.

FOURTH.—All and singular the premises are true.

133 Wherefore, your libellants pray that the said petition be dismissed, with costs to them.

SIDNEY CHUBB,
Proctor for Libellants.

Southern District of New York:

PERCY CHUBB, being duly sworn, deposes and says, that he is a member of the firm of Chubb & Son, who are the attorneys in fact in New York of the libellants,
134 both of whom are now absent, and more than one hundred miles from this district; that the foregoing answer is true to the best of deponent's knowledge, information and belief.

PERCY CHUBB.

Sworn to before me, this 4th day of March, 1887.

JOS. W. HALE,
[L. S.] Public Notary,
4 Hanover Street.

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Exhibit G.

At a stated term of the District Court of the United States, for the Southern District of New York, held at the United States Court Rooms, in the City of New York, on the 9th day of July, 1889.

Present—Honorable CHARLES L. BENEDICT,
Acting District Judge. 138

JOHN LUCAS COTTON and GEORGE CLEUGH,
Libellants,

vs.

The Steamship "BRITANNIA," her engines, etc., and the steamship "BEACONSFIELD," her engines, etc. 139

This cause having been heard on the pleadings and proofs adduced by the respective parties, and an interlocutory degree holding both the said steamships in fault and liable to make good the loss sustained by the libellants as bailees of the cargo of wheat laden on board the said steamship *Beaconsfield*, and an order of reference to Francis Howland, Esq., as Commissioner, 140 to assess the said damages, having been duly entered herein, and the said Commissioner having duly rendered his report, bearing date the 2d day of July, 1889 whereby he allowed the libellants for their said damages the sum of $42,748.63, with $6,920.82 interest thereon to the date of the said report, it is now, on motion of Sidney Chubb, proctor for the libellants.

141 Ordered, adjudged and decreed that the said report of the said Commissioner be and it hereby is in all things confirmed; and on like motion it is further

Ordered, adjudged and decreed that the said libellants recover herein the said sum of $42,748.63, with the said sum of $6,920.82 interest thereon to the 2d day of July, 1880, and the further sum of $49.86 interest on the said damages from the 2d day of July, 1889, to the entry of this decree, together with the further
142 sum of $529.95, their taxed costs herein, making in all the sum of $50,249.26, and that the said steamship *Britannia* and the said steamship *Beaconsfield*, their engines, tackle, apparel and furniture, be each and they hereby are condemned in a moiety of said sum amounting to $25,124.63; and it is further

Ordered, adjudged and decreed that unless this decree be satisfied, or an appeal be taken within the time provided by law and the rules and practice of this Court, that the stipulators for value and for costs on
143 the part of the respective claimants for the said steamships and each of them, do, within ten days after service of a copy of this decree upon the proctors for the respective claimants of said steamships, cause the engagements of their said stipulations to be performed, or show cause within four days after the expiration of the said ten days, or on the first day of jurisdiction thereafter, why summary judgment for the amount of their said stipulations should not be entered against them, their goods, chattels and lands.

144 (Sd.) CHARLES L. BENEDICT.

145

Exhibit H.

CIRCUIT COURT OF THE UNITED STATES

FOR THE SOUTHERN DISTRICT OF NEW YORK.

JOHN LUCAS COTTON and GEORGE CLEUGH,
Libellants and Appellants,

146

vs.

The Steamship "BRITANNIA" her engines, etc., COMPAGNIE FRANÇAISE DE NAVIGATION À VAPEUR CYPRIEN FABRE & CIE,
Claimants and Appellees.

And the Steamship "BEACONSFIELD," her engines, etc., GEO. CLEUGH,
Claimant and Appellant.

147

To the Honorable the Circuit Court of the United States for the Southern District of New York:

The appeal of George Cleugh, claimant of the steamship *Beaconsfield*, respectfully shows:

That on the 29th of November, 1886, the libellants above named exhibited their libel in the District Court 148
of the United States for the Southern District of New York, against the steamship *Britannia*, her engines, etc., claiming damages by reason of the matter set forth in said libel, in the sum of $45,000, as by reference to said libel will more fully appear.

That thereafter the Compagnie Française de Navigation à Vapeur, Cyprien Fabre & Cie., filed a claim to said steamship, and on the 10th day of December,

149 1886, filed a petition under and in pursuance of the provisions of Rule 5th in Admiralty of the Supreme Court of the United States, alleging that the collision set forth in said libel and petition was due to fault on the part of the steamship *Beaconsfield*, and praying that process might issue against said steamship *Beaconsfield*. That thereupon process was issued against said steamship *Beaconsfield* and said steamship attached, and that on the 15th day of December, 1886, the appellant filed his claim to said steamship. That excep-
150 tions having been filed by the claimants of the steamship *Britannia* to the libel, and by this appellant to the petition, on the 23d day of December, 1886, the libellants filed an amended libel against said steamship *Britannia*, and on the 8th day of January, 1887, the claimants of said steamship *Britannia* filed an amended petition against the steamship *Beaconsfield*, and also filed their answer to said libel, praying that the same might be dismissed with costs. That on the 7th day of February, 1887, the appellant filed his answer to
151 said amended petition and on the 5th day of March, 1887, an answer to said amended petition was filed by the libellants.

That said cause came on to be heard before the Honorable Addison Brown, Judge of the said District Court, upon the pleadings, depositions and proofs taken in said cause and the testimony and proofs adduced by the respective parties, and the said Judge having advised thereon, did on the 24th day of April, 1888, make and enter an interlocutory decree in said cause where-
152 by it was adjudged and decreed that the collision set forth in the pleadings was caused by fault on the part of both the steamships *Britannia* and *Beaconsfield*, and that the libellants recover against both of said steamships the damages by them sustained, and further that it be referred to Francis Howland, Esq., Commissioners to ascertain and report the amount of such damages, That the report of the Commissioner bearing date the

2d day of July, 1889, having been filed whereby he as- 153
sessed the damages sustained by the libellants at $42,-
748.63, with interest to the date of the report amount-
ing to $6,920.82, together amounting to $49,669.45,
the said District Court made and entered a final decree
herein on the 9th day of July, 1889, whereby it was
adjudged and decreed that the report of the Com-
missioner be in all things confirmed; that the libellant.
above named recover the said sum of $49,669.45, with
interest to the date of said decree amounting to $49.86,
and their costs taxed at $529.95, amounting in all to 154
the sum of $50,249.26, and that the said steamship
Britannia, her engines, etc., and the said steamship
Beaconsfield, her engines, etc., be each condemned in a
moiety of said sum amounting to $25,124.63.

And this appellant is advised and insists that said decrees are erroneous inasmuch as the steamship *Beaconsfield* was not in fault, but that said collision was wholly due to fault on the part of the steamship *Britannia*, and that the petition of the claimants of the steamship *Britannia* should have been dismissed with 155 costs.

And this appellant, for these and other reasons, appeals from so much of said decree as adjudges the steamship *Beaconsfield* in fault for said collision and condemns said steamship *Beaconsfield* to pay a moiety of the damages sustained by the libellants.

And on said appeal he intends to make new allegations in the Circuit Court and to introduce the same testimony and proofs on which the cause was heard in the District Court and new and further proofs to be 156 taken in this Court.

And he prays that the record and proceedings, proofs, depositions and exhibits may be returned to the said Circuit Court, and that the said decree may be reversed in the respects aforesaid, and such other decree thereupon made as to the said Circuit Court shall seem just, and that the appellees, Compagnie Francaise

157 de Navigation à Vapeur, Cyprien Fabre & Cie, may be condemned to pay to this appellant his costs and damages in the premises.

Dated July 19th, 1889.

GEO. A. BLACK,
Proctor for GEORGE CLEUGH,
Clmt. & Applt.

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158 **Exhibit I.**

U. S. CIRCUIT COURT,

SOUTHERN DISTRICT OF NEW YORK.

JOHN LUCAS COTTON and GEORGE CLEUGH,
Libellants and Appellees,

159 vs.

The Steamship "BRITANNIA," her engines, etc., and the steamship "BEACONSFIELD," her engines, etc., COMPAGNIE FRANÇAISE DE NAVIGATION à VAPEUR, CYPRIEN FABBRE ET COMPAGNIE, Claimant of the steamship "BRITANNIA,"

160 Appellant.

To the Honorable the Judges of the Circuit Court of the United States for the Southern District of New York:

The appeal of the Compagnie Française de Navigation à Vapeur, Cyprien Fabre et Compagnie, owner

and claimant of the Steamship *Britannia*, respectfully 161
shows to the Court:

That on or about the 29th day of November, 1886, the above-named libellants exhibited their libel in the District Court of the United States for the Southern District of New York, claiming over fifty dollars, and praying among other things, that the said steamship *Britannia* might be compelled to pay said libellants' claim with interest and costs.

That thereafter and on or about the 10th day of December, 1886, the said Compagnie Française de 162
Navigation à Vapeur, Cyprien Fabre & Cie., filed its petition praying that the said steamship *Beaconsfield*, etc., be made a party defendant to the suit.

That the claimant of the steamship *Britannia* thereafter answered the libel of the libellants herein, and the claimant of the steamship *Beaconsfield* answered the petition of the Compagnie Francaise de Navigation à Vapeur, Cyprien, Fabre & Cie, the said answers respectfully praying that the said libel and petition might be dismissed with costs, as by refer- 163
ence to said libel and petition and to said answers will more fully appear.

That the said cause came on to be heard before the Honorable Addison Brown, Judge of the District Court of the United States for the Southern District of New York, on the 27th and 28th days of October, and the 2d, 18th, 21st and 22d days of November, 1887, and the said Judge, having advised thereon, on or about the 9th day of July, 1889, made his final decree in the cause, whereby it was adjudged that the libellants re- 164
cover a moiety of their damage, as proved, from the steamship *Britannia*, and a moiety from the steamship *Beaconsfield*.

And the appellant is advised and insists that the said decree is erroneous, inasmuch as it condemned the said steamship *Britannia* to pay a moiety of the libellants

165 damage, and does not decree that the steamship *Beaconsfield* is liable for the whole of said damage and dismiss the libel as to the *Britannia* with costs.

And for these and other reasons the said Compagnie Francaise de Navigation à Vapeur, Cyprien, Fabre & Cie, appeals to the next term of the Circuit Court to be held in this District from the said decree of the District Court, and from each and every part of the decree which holds the steamship *Britannia* in any way liable for the libellants' damage, or for costs.

166 And on said appeal this appellant intends to have the said cause heard anew, on the proofs adduced in the District Court, and on other and further testimony and proofs; and it prays that the record and proceedings may be returned to the Circuit Court, and that the said decree may be so far reversed in this Court as to hold the said steamship *Beaconsfield* in sole fault for the libellants' damage, and discharge the steamship *Britannia*, or that such other decree may be made as to this Court shall seem just, and that the said libel
167 against the *Britannia* may be dismissed with the costs of this Court and of the District Court.

Dated New York, July 10, 1889.

R. D. Benedict,
Proctor for Appellants,
68 Wall St.

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Exhibit J.

At a stated Term of the Circuit Court of the United States, for the Southern District of New York, in the Second Circuit held at the Court Rooms in the United States Post Office building in the City of New York on the 8th day of October, 1890.

Present—Honorable E. HENRY LACOMBE, Circuit Judge.

JOHN LUCAS COTTON,
Libellant and Appellee,

vs.

The Steamship "BRITANNIA," her Engines, etc., COMPAGNIE FRANCAISE DE NAVIGATION Á VAPEUR CYPRIENE FABRE ET CIE,
Claimant and Appellant,
and the Steamship "BEACONSFIELD" her Engines, etc.. ELIZABETH CLEUGH, Executrix of GEORGE CLEUGH, deceased,
Claimant and Appellant.

171

Final Decree.

172

The appeal taken by the Compagnie Francaise de Navigation à Vapeur Cypriene Fabre et Cie, claimant of the steamship *Britannia*, her engines, etc., appellant herein, also by George Cleugh, claimant, of the steamship *Beaconsfield*, her engines, etc., appellant herein, from the final decree of the District Court for the Southern District of New York,

made and entered herein on the 9th day of July, 1889, having duly come on to be heard, and having been submitted upon the proofs adduced by the respective parties, and argument had thereon by their advocates, and due deliberation being had in the premises, and the Circuit Court having thereafter duly made and signed findings of fact and conclusions of law according to the statute in such cases made and provided, whereby, among other things, it found that the said steamship *Britannia* was solely at fault for the collision set forth in the pleadings, and ordered a decree to be entered in favor of these libellants, condemning the said steamship *Britannia*, her engines, etc., for the amount of the libellants' said damages and costs, and dismissing the petition of the Compagnie Francaise de Navigation à Vapeur Cyprien de Fabre et Cie, etc., filed in the District Court, and the proceedings had thereon, by which the said steamship *Beaconsfield* was made a party defendant in this suit, with costs to the claimants of the said steamship *Beaconsfield* against the claimant of the said steamship *Britannia*, in the District Court and in this Court; now, on motion of Sidney Chubb, Proctor for the said libellant, John Lucas Cotton, it is

Ordered, adjudged, and decreed that the said steamship *Britannia* was solely at fault for the collision set forth in the pleadings herein, and that the said steamship *Britannia*, her engines, tackle, apparel and furniture be, and the same hereby is, condemned therefor; and, on like motion, it is further

Ordered, adjudged, and decreed that the said libellant, as bailee of the cargo of wheat laden on said steamship *Beaconsfield*, recover herein from La Compagnie Francaise de Navigation à Vapeur Cypriene Fabre et Cie, etc., claimant herein, their damages aforesaid, amounting to forty two thousand seven hundred and forty-eight dollars and sixty-three cents ($42,748.63), together with the sum of ten thousand

one hundred and seventy-six dollars and eighty-three 177
cents ($10,176.83), interest thereon to the date of the entry of this decree, together with the further sum of five hundred and twenty-nine dollars ($529), libellants' taxed costs in the District Court, and the sum of four hundred and fifty-two dollars and sixty-five cents ($452.65), libellants' taxed costs in this Court, amounting in all to the sum of fifty-three thousand nine hundred and seven dollars and eleven cents ($53,907.11).

And on like motion, and also on motion of Geo. A. Black, proctor for Elizabeth Cleugh, sole executrix of 178
George Cleugh, deceased, claimant herein, it is further

Ordered, adjudged, and decreed that Elizabeth Cleugh, sole executrix of George Cleugh, deceased, claimant of the steamship *Beaconsfield*, have and recover from La Compagnie Francaise de Navigation à Vapeur Cypriene Fabre et Cie, etc., claimant herein, the sum of ninety-six dollars and forty-five cents ($96.45), her taxed costs in the District Court, and the further sum of thirty-two dollars and ninety-five cents ($32.95), her taxed costs in this Court, making in all 179
the sum of one hundred and twenty-nine dollars and forty cents ($129.40); and on like motion, it is further

Ordered, adjudged, and decreed that ulness this decree be satisfied, or an appeal be taken therefrom within the time provided by law and the rules and practice of the Court, after service of this decree upon the proctor for the said claimant, La Compagnie Francaise de Navigation à Vapeur Cypriene Fabre et Cie, etc., that the stipulators for value and for costs on the part of the said claimant of the said steamship 180
Britannia cause the engagements of their said stipulations to be performed, or show cause within four days after the expiration of the said time, or on the first day of jurisdiction thereafter, why summary judgment

181 for the amount of said stipulations should not be entered against them, their goods, chattels and lands.

E. HENRY LACOMBE.

[Endorsed :]—United States Circuit Court, Southern District of New York—John Lucas Cotton *v.* The steamships *Britannia* and *Beaconsfield*—Final Decree—Sidney Chubb, Proctor for Libellant, No. 50 Wall street, New York City.—U. S. Circuit Court. Filed October 8, 1890.—JOHN A. SHIELDS, Clerk.

182

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Exhibit K.

185

At a Stated Term of the Circuit Court of the United States of America, held at the Post Office Building, in the City of New York, on the 8th day of October, 1890.

Present—Hon. E. Henry Lacombe, Circuit Judge.

Elizabeth Cleugh, as Sole Executrix of George Cleugh, deceased,

186

AGAINST

The Steamship "Britannia," Compagnie Francaise, &c.,

Claimant.

John Lucas Cotton and George Cleugh

187

AGAINST

The Steamships "Britannia" and "Beaconsfield."

La Compagnie Francaise de Navigation a Vapeur, Cyprien et Cie.

188

vs.

The Steamship "Beaconsfield," Cleugh,

Claimant.

And now comes Robert D. Benedict, proctor for La Compagnie Francaise de Navigation a Vapeur

189 Cyprien Fabre et Cie. and for the steamship *Britannia* and in open Court, and in the presence of the proctors for the *Beaconsfield* and for Cotton, appeals separately from each of the decrees in the above-entitled causes this day duly entered by the Court, and the said appeals are thereupon allowed by the Court and duly entered in the minutes.

E. Henry Lacombe.

[Endorsed :]—U. S. Circuit Court.—Elizabeth Cleugh, Ex. &c., against Steamship *Britannia*.—John L.
190 Cotton *et al v.* Steamships *Britannia & Beaconsfield*.—*Compagnie Francaise* &c., against Steamship *Beaconsfield*.—Order allowing appeal.—R. D. Benedict,, Proctor for *Britannia* &c., 68 Wall street, New York.—U. S. Circuit Court.—Filed Oct. 8, 1890.—John A. Shields, Clerk.

191

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193

Exhibit L.

United States of America, ss.:

THE PRESIDENT OF THE UNITED STATES OF AMERICA,

To the Honorable the Judges of the Circuit Court of the United States for the Southern District of New York.

[SEAL.]

194

GREETING:

Whereas, lately in the Circuit Court of the United States for the Southern District of New York, before you, or some of you, in a cause between the steamship *Britannia*, her engines, &c., La Compagnie Francaise de Navigation à Vapeur, Cyprien Fabre et Cie, claimants, and the steamship *Beaconsfield*, her engines, &c., Elizabeth Cleugh, executrix of George Cleugh, deceased, claimant-appellants, and John Lucas Cotton, 195
libellant and appellee, wherein the decree of the said Circuit Court, entered in said cause on the 8th day of October, A. D. 1890, is in the following words, viz.:

"The appeal taken by the Compagnie Francaise de Navigation à Vapeur, Cypriene Fabre et Cie, claimant of the steamship *Britannia*, her engines, etc., appellant herein, also by George Cleugh, claimant of the steamship *Beaconsfield*, her engines, etc., appellant herein, from the final decree of the District Court for the Southern District of New York, made 196
and entered herein on the 9th day of July, 1889, having duly come on to be heard and having been submitted upon the proofs adduced by the respective parties, and argument had thereon by their advocates, and due deliberation being had in the premises, and the Circuit Court having thereafter duly made and signed findings of fact and conclusions of law according to the statutes in such cases made and provided,

197 whereby among other things, it found that the said steamship *Britannia*, was solely at fault for the collision set forth in the pleadings and ordered a decree to be entered in favor of these libellants, condemning the said steamship *Britannia*, her engines, etc., for the amount of the libellants said damages and costs and dismissing the petition of the Compagnie Francaise de Navigation à Vapeur, Cypriene Fabre et Cie., etc., filed in the District Court and the proceedings had thereon by which the said
198 steamship *Beaconsfield* was made a party defendant in this suit, with costs to the claimants of the said steamship *Beaconsfield*, against the claimant of the said steamship *Britannia*, in the District Court and in this Court. Now, on the motion of Sidney Chubb, proctor for the said libellant, John Lucas Cotton, it is

Ordered, adjudged and decreed, that the said steamship *Britannia*, was solely at fault for the collision set forth in the pleadings herein, and that the said steamship *Britannia*, her engines, tackle, apparel and furni-
199 ture, be, and the same hereby is, condemed therefor; and, on like motion, it is further

Ordered, adjudged and decreed that the said libellant, as bailee of the cargo of wheat laden on said steamship *Beaconsfield*, recover herein from La Compagnie Francaise de Navigation a Vapeur, Cyprien Fabre ,et Cie, etc., claimant herein, their damages aforesaid, amounting to forty-two thousand seven hundred and forty-eight dollars and sixty-three cents ($42,748.63), together with the sum of ten thousand
200 one hundred and seventy-six dollars and eighty-three cents ($10,176.83), interest thereon to the date of the entry of this decree, together with the further sum of five hundred and twenty-nine dollars ($529.00) libellants' taxed costs in the District Court, and the sum of four hundred and fifty-two dollars and sixty five cents ($452.65), libellants' taxed costs in this Court, amounting in all to the sum of fifty-three thousand nine hundred and seven dollars and eleven cents ($53,907.11).

And on like motion, and also on motion of Geo. A.

Black, proctor for Elizabeth Cleugh, sole executrix of George Cleugh, deceased, claimant herein, it is further 201

Ordered, adjudged and decreed that Elizabeth Cleugh, sole executrix of George Cleugh, deceased, claimant of the steamship *Beconsfield*, have and recover from La Compagnie Francaise de Navigation à Vapeur, Cypriene Fabre et Cie.. etc., claimant herein, the sum of ninety-six dollars and forty-five cents ($96.45) her taxed costs in the District Court, and the further sum of thirty-two dollars and ninety-five cents ($32.95) her taxed costs in this Court, making in all the sum 202 of one hundred and twenty-nine dollars and forty cents ($129.40); and, on like motion, it is further

Ordered, adjudged and decreed that unless this decree be satisfied or an appeal be taken there from within the time provided by law and the rules and practice of the Court after service of this decree upon the proctor for the said claimant, La Compagnie Francaise de Navigation de Vapeur, Cyprien Fabre et Cie, etc., that the stipulators for value and for costs on the part of the said claimant of 203 the said steamship *Britannia* cause the engagements of their said stipulations to be performed, or show cause within four days after the expiration of the said time, or on the first day of jurisdiction thereafter, why summary judgment for the amount of their said stipulations should not be entered against them, their goods, chattels and lands.

E. Henry Lacombe."

204

205 As by the inspection of the transcript of the record of the said Circuit Court, which was brought into the Supreme Court of the United States, by virtue of an appeal taken by the steamship *Britannia*, La Compagnie Francaise de Navigation à Vapeur, Cyprien Fabre et Cie, claimants, agreeably to the act of Congress, in such case made and provided, fully and at large appears.

And whereas, in the present term of October, in the year of our Lord one thousand eight hundred and
206 ninety-three, the said cause came on to be heard before the said Supreme Court, on the said transcript of record, and was agreed by counsel.

On consideration whereof, it is now here ordered, adjudged and decreed by this Court that the decree of the said Circuit Court in this cause be, and the same is hereby reversed, with costs in this Court against Elizabeth Cleugh, executrix only, and that the said La Compagnie Francaise de Navigation à Vapeur Cyprien Fabre et Cie recover against the said Elizabeth Cleugh,
207 executrix, &c., one hundred and twenty-six dollars and fifty cents for their costs herein expended and have execution therefor.

And it is further ordered that this cause be, and the same is hereby, remanded to the said Circuit Court with directions to enter a decree in accordance with the opinion of this Court.

April 23, 1894.

You, therefore, are hereby commanded that such execution and further proceedings be had in said cause,
208 in conformity with the opinion and decree of this Court as according to right and justice and the laws of the United States, ought to be had, the said appeal notwithstanding.

Witness, the Honorable Melville W. Fuller, Chief Justice of the United States, the eighteenth day of May, in the year of our Lord one thousand eight hundred and ninety-four.

209

COSTS OF LA COMPAGNIE FRANCAISE, ETC.

Clerk	$59 75
Printing record	$46 75
Attorney	$20 00
	$126 50

JAMES H MCKENNEY,
Clerk of the Supreme Court
of the United States.

210

[Endorsed:]—Supreme Court of the United States, No. 341, October Term, 1893.—The Steamship *Britannia*, &c., *vs.* John Lucas Cotton.—Mandate.—U. S. Circuit Court, Filed May 19, 1894, John A. Shields, Clerk.

211

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213

Exhibit M.

UNITED STATES CIRCUIT COURT,

SOUTHERN DISTRICT OF NEW YORK.

JOHN LUCAS COTTON

AGAINST

214 The Steamship "BRITANNIA."

In the Matter of the Petition of the COMPAGNIE FRANCAISE, &c.,

AGAINST

The Steamship "BEACONSFIELD."

215 Southern District of New York, ss. :

J. PARKER KIRLIN, being duly sworn, says that he is one of the proctors for the sureties on the stipulations given to release the *Beaconsfield* from the process under above mentioned petition. That he is informed, and verily believes, that on the 25th day of May, 1894, Elizabeth Cleugh, as administratrix of the late George Cleugh, deceased, and John Lucas Cotton, libellant herein, sent a cablegram from Newcastle, England, to
216 Sidney Chubb, Esq., proctor for libellant Cotton, in the words following :

"You must not consent to any decree in our names, except against *Britannia* for half damages. We only agreed to be libellants as bailees of cargo against *Britannia*. We forbid our names being used for any decree against *Beaconsfield* for loss of cargo. Please do needful to give effect to this." Signed, "Cleugh, Cotton."

Deponent further states that he is unable to annex the original cable to this affidavit, for the reason that

he is informed and believes said cable is in the possession of Sidney Chubb, Esq., proctor for libellant, to whom it was addressed. He further says that he stated the purport of the said cable to the court upon settlement of the final decree, in the presence of Mr. Chubb, who did not dispute the receipt of such a cable, and thereupon deponent obtained leave to file this affidavit in this proceeding. 217

Deponent further says that the source of his information and belief is a letter from Edward S. Scorfield, Esq., Secretary of the Insurance Company which has acted for Elizabeth Cleugh as owner of the *Beaconsfield* in the various litigation growing out of this collision. Said Scorfield and Elizabeth Cleugh, as deponent is informed, both reside in Newcastle. 218

J. P. KIRLIN.

Sworn to before me this
7th day of June, 1894.

[SEAL] FREDERICK GREEN,
Notary Public,
N. Y. Co. 219

220

221

Exhibit N.

At a stated term of the Circuit Court of the United States for the Southern District of New York, held at the U. S. Court Rooms in the City of New York, on the fourth day of June, 1894.

Present—Hon. E. Henry Lacombe, Circuit Judge.

222

John Lucas Cotton,
Libellant,

vs.

The Steamship "Britannia," her engines, &c., La Compagnie Francaise de Navigation á Vapeur,
223 Cyprien Fabre et Cie, Claimants, and the Steamship "Beaconsfield," her engines, &c., Elizabeth Cleugh, Executrix of George Cleugh, deceased,
Claimant.

A motion to substitute Albert W. Sanbern as owner of the cargo of wheat laden on the said steamship
224 *Beaconsfield*, as sole libellant herein in the place and stead of the said John Lucas Cotton as bailee of the said cargo, having duly come on to be heard.

Now, after hearing Sidney Chubb, Esq., proctor for libellant in support of said motion, and George A. Black, Esq., advocate for the *Beaconsfield* and her claimant, and J. Parker Kirlin, Esq., advocate for William Libbey, a surety, on the stipulation for value

given herein on the part of the *Beaconsfield*, and also 225
for the executors of the last will and testament of George C. Magoun, a deceased surety upon the said stipulation for value, in opposition thereto, and on motion of Sidney Chubb, proctor for the libellant, and on reading and filing the notices of said motion with admission of service thereof and the affidavit of Albert W. Sanbern verified on the thirty-first day of May, 1894, with the four exhibits thereto annexed and the affidavit of Sidney Chubb verified on the thirty-first day of May, 1894, and a transcript of cer- 226
tain writings on file and remaining of record herein in the office of the Clerk of the District Court of the United States for the Southern District of New York, certified to by said Clerk on the twenty-fifth day of May, 1894, and the assignment dated May thirty-first, 1894, of the Underwriters mentioned in said certified transcript to the said Albert W. Sanbern, and the affidavit of Percy Chubb, verified June first, 1894, in support of said motion and the affidavits of George A. Black and of J. Parker Kirlin, and the stipulation 227
signed by the libellant's proctor, dated June 2nd, 1894, in opposition thereto and upon all the papers and proceedings herein, it is by the Court

Ordered that the said Albert W. Sanbern be, and he hereby is substituted as libellant in the place and stead of the said libellant, John Lucas Cotton, and made sole libellant herein.

June 4th, 1894.

E. Henry Lacombe,
U. S. Circuit Judge. 228

[Endorsed :]—U. S. Circuit Court, Southern District of New York.—John Lucas Cotton *v.* The S. S. *Britannia*, &., La Compagnie Francaise de Navigation, &c., Claimant, and the S. S. *Beaconsfield*, &c., Elizabeth Cleugh, Executrix of George Cleugh, dec'd, Claimant.—Order.—Sidney Chubb, Proctor for Libt, 18 Exchange Place, New York, N. Y.,—U. S. Circuit Court.—Filed June 7, 1894, at 1.01 P. M.—John A. Shields, Clerk.

229

Exhibit O.

At a Stated Term of the Circuit Court of the United States for the Southern District of New York, in the Second Circuit, held at the U. S. Circuit Court Rooms, in the City of New York, on the 4th day of June, A. D. 1894.

230 Present—Hon. E. Henry Lacombe, Circuit Judge.

Albert W. Sanbern,

Libellant,

against

The Steamship "Britannia," her engines, &c., La Compagnie Francaise
231 de Navigation á Vapeur, Cyprien Fabre et Compagnie.

Claimant,

And the Steamship "Beaconsfield," her engines, &c., Elizabeth Cleugh, Executrix of George Cleugh deceased,

Claimant.

} Final Decree.

232

The claimant, of the steamship *Britannia*, La Compagnie Francaise de Navigation à Vapeur, Cyprien Fabre et Compagnie, having appealed to the Supreme Court of the United States from the final decree of this Court entered herein on the 8th day of October, 1890, and the said appeal having been heard and decided, and the mandate of the said Supreme Court,

of the United States thereon having been presented to 233
this Court, wherein and whereby it appears that the said Final Decree of this Court, entered on the 8th day of October, 1890, is reversed, with costs taxed at one hundred and twenty-six dollars ($126) to the appellant against Elizabeth Cleugh, executrix of George Cleugh, deceased, claimant of the Steamship *Beaconsfield*, only and the said cause remanded to this Court with directions to this Court to enter a final decree in accordance with the opinion of the said Court, as more fully appears by reference to said mandate. And Al- 234
bert W. Sanbern, the owner of the cargo laden on board the said steamship *Beaconsfield*, having been substituted as sole libellant in the place and stead of John Lucas Cotton as bailee of said cargo by an order made and entered herein on the fourth day of June, 1894: Now, on reading and filing the mandate of the said Supreme Court and on motion of Sidney Chubb, proctor for the libellant, it is by the Court

Ordered, adjudged and decreed that both the said steamships *Britannia* and *Beaconsfield* were at fault 235
for the collision set forth in the pleadings herein. And on like motion it is further

Ordered, adjudged and decreed that the said libellant Albert W. Sanbern as owner of the cargo of wheat laden on board said steamship *Beaconsfield*, recover the damages sustained by the said cargo as fixed by the final decree of the District Court herein entered on the ninth day of July, 1889, namely the sum of forty-two thousand seven hundred and forty-eight $\frac{63}{100}$ dollars, ($42,748.63) together with the sum of nineteen thou- 236
sand three hundred and twenty-two $\frac{5}{100}$ dollars ($19,-322.05) interest thereon from the 20th day of November, 1886, to date, (7 years, 192 days) and the further sum of five hundred and twenty-nine $\frac{95}{100}$ dollars, ($529.95) libellant's costs of the District Court and the further sum of four hundred and fifty-two $\frac{65}{100}$ dollars ($452.65) libellant's costs in this Court, making in all the

237 sum of sixty-three thousand and fifty-three $\frac{28}{100}$ dollars ($63.053.28). And that the said steamship *Britannia*, her engines, tackle, apparel and furniture, and the said steamship *Beaconsfield*, her engines, tackle, apparel and furniture, be, and they are hereby, condemned each in a moiety of said sum amounting to thirty-one thousand five hundred and twenty-six $\frac{64}{100}$ dollars ($31,526.64).

And on motion of Benedict & Benedict, proctors for the *Britannia* and her owner, it is

Further ordered, adjudged and decreed, that the said
238 appellant, La Compagnie Francaise de Navigation à Vapeur, Cyprien Fabre et Compagnie, have judgment against Elizabeth Cleugh, executrix of George Cleugh, deceased, claimant of the Steamship *Beaconsfield*, for the sum of one hundred and twenty-six $\frac{50}{100}$ dollars ($126.50) its taxed cost of appeal to the said Supreme Court of the United States. And it is

Further ordered, adjudged and decreed that unless this decree be satisfied that the stipulators for value and for costs on the part of the claimants of the said
239 steamship *Britannia* and of the steamship *Beaconsfield* cause the engagements of their said stipulations to be performed or show cause within four days after the service of a copy of this decree upon the proctors for the respective claimants of said steamships, or on the first day of jurisdiction thereafter, why execution should not issue against their goods, chattels and lands for the amonnt of the said stipulation.

[SEAL.] Sd. E. HENRY LACOMBE,
U. S. Circuit Judge.

240 A Copy—JOHN A. SHIELDS,
Clerk.

[Indorsed :]—Filed June 7th, 1894.

[Admission of service of the foregoing decree and notice of entry was also endorsed on the decree].

241

Exhibit P.

At a Stated Term of the Circuit Court of the United States for the Southern District of New York, held at the U. S. Court Rooms in the City of New York, on the twelfth day of June, A. D. 1894.

Present—Hon. E. Henry Lacombe, Circuit Judge.

242

Albert W. Sanbern, Libellant, vs. The Steamship "Britannia," her Engines, &c., La Compagnie Francaise de Navigation a Vapeur, Cyprien Fabre et Cie, Claimants, And the Steamship "Beaconsfield," her Engines, &c., Elizabeth Cleugh, Executrix of George Cleugh, deceased, Claimant.	Order for Judgment. 243

244

The final decree herein bearing date the fourth day of June, 1894, having ordered that the several stipulators for costs and for value herein show cause unless the said decree be satisfied, why execution should not issue against their goods, chattels and lands, as by reference to said decree more fully appears, and the said order to show cause having duly come on to be heard.

Now, after hearing Sidney Chubb, Esq., advocate for the libellant, in support of said motion, and

245 George A. Black, Esq., advocate for the *Beaconsfield*, and J. Parker Kirlin, Esq., advocate for the sureties, upon the stipulation for value given upon behalf of the *Beaconsfield* herein, in opposition thereto, and due deliberation having been had in the premises,

Now, on motion of Sidney Chubb, proctor for the libellant, and on reading and filing a certified copy of the said final decree herein, with an admission dated June 4th, 1894, of due and timely service of a copy thereof with notice of entry thereof, thereon endorsed
246 and signed by the respective proctors for the claimants of the steamship *Britannia* and for the claimant of the steamship *Beaconsfield*, and for the said sureties upon the said stipulation for value for the *Beaconsfield*, and a certified copy of the said stipulation for value, in support of said motion and the affidavit of J. Parker Kirlin in opposition thereto, it is by the Court

Ordered, that the libellant, Albert W. Sanbern, have judgment and execution against William Libbey,
247 one of the sureties on the said stipulation for value (George C. Magoun, the other surety, being dead) in the sum of twenty-three thousand dollars ($23,000).

E Henry Lacombe,
U. S. Circuit Judge.

248

249

Exhibit Q.

Names of Parties Against Whom Judgment Has Been Obtained.	Names of Parties in Whose Favor Judgment Has Been Obtained.	Judgment—How Obtained.
William Libbey.	Albert W. Sanbern.	Decree

Amount of Debt and Damages.	Time of Signing Roll.	Time of Filing Roll.	Attorney's Name.	When Satisfied.
$23,000.00.	June 12, 1894.	June 12, 1894.	Sydney Chubb.	—

250

I, JOHN A. SHIELDS, Clerk of the Circuit Court of the United States of America, in and for the Southern District of New York, Second Circuit, do hereby certify that the foregoing is a true and correct transcript from the Docket of Judgments kept in my office.

In testimony whereof I have hereunto subscribed my name and affixed the seal of said Circuit Court this first day of September, A. D. one thousand eight 251
[SEAL.] hundred and ninety-four, and of the independence of the United States of America the one hundred and nineteenth.

JOHN A. SHIELDS,
Clerk.

252